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SIXTH DIVISION
June 29, 2018

Nos. 1-14-2401 & 1-14-2682 (Consolidated)
2018 IL App (1st) 142401-U

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | |
| | ) | Appeal from the |
| | ) | Circuit Court of Cook County. |
| Plaintiff-Appellee, | ) | |
| | ) | |
| v. | ) | 09 CR 08815 |
| | ) | |
| D'ANDRE HOWARD, | ) | |
| | ) | Honorable Ellen Beth Mandeltort, |
| Defendant-Appellant. | ) | Judge Presiding. |
| | ) | |

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JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court's evidentiary rulings that barred certain evidence of defendant's mental health history did not constitute an abuse of discretion where such evidence was irrelevant, remote, speculative, or not the proper subject of lay witness testimony; the trial court's refusal to allow the defense to ask potential jurors about their "feelings and viewpoints" regarding the insanity defense was not an abuse of discretion where the defense was nonetheless able to ascertain the potential jurors' attitudes toward the insanity defense; and under plain-error review, the State did not commit prosecutorial misconduct where the allegedly improper comments that occurred during closing argument were not clear or obvious errors; affirmed.

¶ 2 Defendant, D'Andre[1] Howard, was charged with three counts of first degree murder and one count of attempt murder, after he stabbed four victims, three of whom died from their injuries. Defendant raised the affirmative defense of insanity at his jury trial, but was nonetheless convicted. Defendant was sentenced to three concurrent natural life terms on the murder counts, and a 60-year consecutive sentence for the attempt murder count. He now appeals, arguing that he was deprived of his right to present his insanity defense where the trial court barred numerous pieces of evidence relevant to his defense, that he was denied a fair trial before an impartial jury because the defense was prohibited from asking about potential jurors' feelings and viewpoints towards the defense of insanity, and that the State committed prosecutorial misconduct during closing argument. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 This case involves the murder and attempt murder of family members of defendant's then-fiancée, Amanda Engelhardt. Specifically, on April 17, 2009, while at the family's home in Hoffman Estates, defendant stabbed to death Amanda's younger sister, Laura Engelhardt, Amanda's father, Alan Engelhardt, and Amanda's maternal grandmother, Marlene Gacek. Defendant also stabbed Amanda's mother, Shelly Engelhardt, but she survived her injuries.

¶ 5 A. Pre-Trial Matters

¶ 6 On October 11, 2011, defendant filed his answer to the State's motion for pre-trial discovery, stating that he would "rely on self defense, as well as the State's inability to prove their case beyond a reasonable doubt." Defendant's answer stated that the defense may call as a witness, Robert Hanlon, Ph.D., a neuropsychologist, and two other doctors. Dr. Hanlon's report reflected that he diagnosed defendant with post-traumatic stress disorder (PTSD), schizoaffective

[1] Although the notice of appeal lists defendant's name as "Dandre Howard," defendant's brief clarifies that his name is actually D'Andre Howard. As such, we refer to defendant by his correct name.

disorder, depressive type, and mixed personality disorder with paranoid, avoidant, schizotypal, and borderline personality features. Dr. Hanlon's report contained his opinion that "[defendant's] mental disorders, specifically chronic PTSD, [s]chizoaffective [d]isorder, and mixed personality disorder influenced his conduct at the time of the alleged crime on [April 17, 2009]."

¶ 7 On October 18, 2012, the State filed a motion *in limine* seeking to bar the testimony of Dr. Hanlon and the other two doctors, arguing that because defendant had not asserted an insanity defense, the testimony regarding his mental state was irrelevant since the "diminished capacity" defense was not recognized in Illinois. Prior to issuing its ruling the court stated, "It is clear from the record in this case, and [c]ounsel has conceded that the three expert witnesses that were retained by the defense were originally retained when this case was, in fact, a capital case." The court noted that "the defense is certainly entitled to present any defense that they wish," but granted the State's motion to bar, explaining that "the reports that this [c]ourt has read involve the doctors speculating as to the effects of incidents in his life as a child and adolescence that may or may not have affected his actions on the date in question."

¶ 8 On March 11, 2013, defendant filed a supplemental answer, stating that he "also asserted the affirmative defense of insanity." On April 16, 2014, defendant filed his second supplemental answer, listing the names of 29 witnesses that defendant may call at trial to testify regarding his mental health, including Dr. Hanlon and others.

¶ 9 On May 1, 2014, the State filed a motion *in limine* to preclude the defense from presenting an insanity defense or offering testimony to negate the required mental state at the time of the crime. The court heard argument on the motion on May 6, 2014. The State argued that defendant should not be able to assert the defense of insanity because he did not have an

expert witness who would testify that defendant was insane at the time of the crime. Additionally, the State contended that none of the witnesses the defense sought to call at trial had observed defendant at the time of the crime, and their observance of defendant was too remote to be relevant. The defense responded that testimony regarding defendant's mental illness was relevant to his insanity defense, and specifically, that Dr. Hanlon's testimony would be relevant to whether defendant had a mental disease or defect throughout his life. Defense counsel also made the following statement:

> "Dr. Hanlon is not -- his testimony would not be introduced as expert testimony. We're not seeking to introduce his testimony in any kind of a claim of diminished capacity. He was an expert who reviewed [defendant's] mental disease and defects in the past, and that based on mental health records that he reviewed, that therefore, he did, in fact, have this mental disease or defect in the past."

¶ 10 After argument, the court explained that the first 10 witnesses on defendant's second supplemental answer involved mental health examinations from 1995 to 2002, and barred these witnesses because "these examinations are extremely remote in time and would not assist the trier of fact in determining whether or not the defendant was insane at the time of the offense." The court further noted that witnesses 11 through 14 did not include any dates of treatment. Also, the court stated that witnesses 15 through 19 covered the time period of 2008 through April 2009, and requested that defense counsel make an offer of proof regarding the contents of their testimony. As to witnesses 20 through 28[2], the court referred to them as "medical staff that treated defendant on the date of the offense," and stated that their testimony was allowable because "[t]hat testimony would be offered to talk about his injuries." Regarding witness 29, Dr.

[2] Although the court only referred to witnesses 20 through 27, we presume it intended to also include witness 28, which was listed as "CCHS Cermak Hospital Staff to be identified … April 2009," due to the court's statement that these were all "medical staff that treated defendant on the date of the offense."

Hanlon, the court stated that it had "previously granted a motion [*in limine*] precluding his testimony, and this [c]ourt stands by that ruling." The court concluded its ruling by stating:

> "As with all defenses, evidence presented to the trier of fact for an insanity defense must be relevant and admissible. The law does not and this [c]ourt will not allow defendants to present evidence of mitigating factors during a trial in an attempt to avoid criminal responsibility for their actions by attempting to admit otherwise inadmissible evidence under the guise of an insanity defense.
>
> It appears to this [c]ourt based on the arguments I heard today that the defense is once again attempting to put evidence of mitigating factors before this jury in an attempt to avoid criminal responsible [*sic*] for his actions. This [c]ourt stands by its ruling that I will allow you to present witnesses as to the defendant's insanity at the time of the offence [*sic*], but it will not allow mitigation witnesses to be presented under the guise of an insanity defense.
>
> So counsel, if you wish, I will give you an opportunity to either have those witnesses presented to this [c]ourt or make an offer of proof on the specific witnesses *** that you believe will be relevant and admissible on the issues of insanity at the time of the offense.
>
> ***
>
> I will give you an opportunity to make an offer of proof, but counsel, I will tell you that this [c]ourt does not believe that your client's mental health status throughout his life is relevant to the issue of sanity. The issue before this [c]ourt and the evidence that you may present to this jury is evidence from people establishing that at the time of the offense he was insane and unable to appreciate the criminality of his conduct."

¶ 11 On May 13, 2014, the hearing on the State's motion *in limine* continued with the defense presenting offers of proof regarding its proposed witnesses' testimony. The court began the hearing by emphasizing that "the defense may, according to case law, present an insanity defense to a jury by the use of lay testimony" but that "whether it is the defense or whether it's the State, any evidence before that jury must be submitted according to the rules of evidence and must be admissible testimony before it could be heard."

¶ 12 The defense began by explaining that it believed that the evidence elicited at trial regarding defendant's insanity would come in three categories: (1) occurrence witnesses, such as Shelly and Amanda who witnessed the crimes here firsthand; (2) defendant's videotaped interrogation; and (3) defendant's mental health history. The defense further explained that it intended to call witnesses regarding defendant's mental health "not to support -- that he was insane at the time but the fact that he has mental illness and mental health -- a history of mental illness that would be -- that is consistent with that." Regarding Dr. Hanlon, the court clarified that it had stood by its ruling on the State's motion to bar his testimony because "he never opined that [defendant] was insane at the time" and "never even discussed with [defendant] anything regarding his mental status at the time of the offense." The court further explained, "given the fact that it is the job of the trier of fact to determine whether he was insane at the time of the offense, I don't believe Dr. Hanlon's opinion is relevant because it will not assist the trier of fact in determining the ultimate issue." The defense then made offers of proof for Dr. Hanlon, Jeni Brickman, defendant's most recent therapist from Alternative Behavior Treatment Center (ABTC) who worked with defendant beginning in 2003, Anne Rauen, defendant's Illinois Department of Children and Family Services (DCFS) case worker from 2008 to the date of the occurrence, Dr. Albert Ma, an ABTC psychiatrist who diagnosed defendant in 2003, Anthony

Eppolito, a therapist who treated defendant from 2003 to 2006, and Drs. Ravinder Grewal and Khursheed Ahmed, both of whom treated defendant at the emergency room at St. Alexius Medical Center when he attempted suicide on December 25, 2008. The defense also made an offer of proof for the witnesses from Alexian Brothers Hospital, namely, Dr. Mumtaz Raza, who evaluated defendant on the date in question after the murders. Defense counsel stated that defendant reported to Dr. Raza that he was suicidal and that he was hearing voices, but could not give specifics. On appeal, defendant challenges the evidentiary rulings on some of the proffered witness testimony, and thus, for purposes of efficiency and clarity, we set forth in detail the substance of each relevant witness's proffered testimony later in this order in section (II)(A)(1).

¶ 13 The court delivered the remainder of its ruling on the State's motion *in limine* to bar the insanity defense on May 19, 2014, and prefaced it by stating that its ruling was "subject to the actual evidence or testimony elicited at trial; and the [c]ourt will, of course, reconsider its ruling at trial, if needed." The court summarized relevant argument made by the defense as follows:

> "Defense counsel argued that [testimony regarding defendant's mental health history] -- and I quote -- is not being offered to support that he was insane at the time but the fact that he has a mental illness that would be consistent with that.
>
> Defense counsel argued that when an expert testifies as to insanity, he or she is allowed to testify as to prior mental health history, previous diagnoses, and previous treatments. Therefore, [the] defense would like to present the testimony of defendant's prior mental health history to, quote, expand on, closed quote, the testimony of the lay witnesses Shelly and Amanda Engelhardt and to expand on the video of the defendant's interrogation.

> When an expert testifies in a court of law, they are allowed to render an opinion based upon their experience, their expertise, their training and their examination of the defendant. The expert is allowed to testify as to the basis of their opinion, what reports they relied on, what tests they relied on, what examinations they performed and basically what formed the basis of that expert opinion.
>
> Those same rules do not apply to lay witnesses. Lay witness testimony offered in support of an insanity defense is limited to the layperson's observations of the defendant, what the witness saw, what the witness heard.
>
> A lay witness, unlike an expert witness, would not be able to give their opinion as to the defendant's sanity. They would only be able to testify to what they actually observed."

¶ 14 The court determined that Brickman's testimony would not be admissible under the rules of evidence, as it was in the nature of mitigation evidence that would be admissible at sentencing, but not trial. Additionally, the court noted that although Brickman reviewed defendant's medical history, she never diagnosed him. As to Rauen, the court found that her testimony would also be in the nature of mitigation evidence since it included "how [defendant] became a ward of the State, his mother's substance abuse, the fact that his siblings tested positive for cocaine at birth, prior incidents with mom and mom's boyfriend that were indicated by the [(DCFS)], [and] his numerous placements with that agency." Also, the court noted that although the defense stated that Rauen would testify regarding defendant's 2008 suicide attempt, according to the proffer, defendant had refused to sign a medical release to Rauen so she could not verify any of the information. Thus, the court found that Rauen's testimony would be inadmissible hearsay. Further, the court found that Dr. Ma's treatment of defendant, which

occurred in 2003 and 2004, was "too remote and would not aid the trier of fact in determining the issue of whether or not the defendant was insane at the time of this offense in 2009."

¶ 15 The court ruled that it would allow testimony from some personnel from Alexian Brothers Hospital, where defendant was treated for his injuries after the stabbings because "given that those observations were made shortly after the murders, [and given] that the testimony would be admissible and would possibly aid the trier of fact on the ultimate issues as to the defendant's insanity." However, the court stated that it would not allow testimony from the other Alexian Brothers personnel regarding the fact that defendant visited that hospital the day before the murders for an injury to his leg, because "[a]ccording to the proffer, the defendant left the hospital before he was actually seen or actually diagnosed by medical personnel," rendering their testimony speculative. The court further found that the offer of proof for December 25, 2008, a date when defendant went to the emergency room, was "too remote and that any testimony regarding the staff who treated him at that time, [Drs. Grewal and Ahmed], will not be allowed before the jury." Finally, the court addressed the proffered testimony from Cermak Hospital personnel regarding the evaluation defendant received after being brought to the psychiatric unit of Cermak Hospital. The court found the Cermak Hospital testimony admissible because "those observations were made shortly after the murders *** and might aid the trier of fact on the issue of insanity."

¶ 16 At the conclusion of the hearing, the State informed the court that although defendant had filed his supplemental answer asserting the affirmative defense of insanity 14 months earlier, the defense had not yet identified the witnesses from Cermak Hospital that the defense intended to call. Defense counsel informed the court that she provided the Cermak Hospital medical records to the State a year ago, and thus, the State should be aware of the illegibility of the names on the

records. The court then gave the defense "24 hours to figure out who you're calling from Cermak and get that information to the State." Also on that date, the parties confirmed that trial was to commence on May 27, 2014, by agreement.

¶ 17 On May 20, 2014, defendant filed a motion to continue trial, arguing that Dr. Mirella Susnjar, one of the psychologists who evaluated and diagnosed defendant upon arrival at Cermak Hospital was going to be out of the country and unable to testify from May 27, 2014, to June 16, 2014. Attached to defendant's motion was evidence that Dr. Susnjar had been served with a subpoena on May 16, 2014. On May 21, 2014, the parties appeared before the court, with the defense arguing that a continuance was needed because Dr. Susnjar was a necessary, material witness because she was the first doctor to evaluate defendant when he was received in the psychiatric ward of Cermak Hospital. The State objected, asserting that the case was five years old, and that although there was a change of defense counsel midway through the case, the defense had ample time to determine what its witnesses' schedules were.

¶ 18 The court denied defendant's motion to continue trial, recognizing that the case had been active for five years, and specifically stating:

> "We litigated extensive motions with a public defender who [has] subsequently retired. This [c]ourt waited patiently for a new public defender to be appointed. This [c]ourt waited even more patiently *** to allow you and your co-counsels to get up to speed.
>
> I think this [c]ourt has gone above and beyond in terms of extending you the courtesy and the time to prepare this case. This case was originally set for May 6th for jury [trial]. This [c]ourt indulge[d] your request to make it May 27th so you knew as -- for some period of time that this was going to trial.

> You requested and agreed to the date of May 27th. In your motion you indicated that Dr. Razi [*sic*] is one of the psychiatrists who examined the defendant. Based on your representations during the motion [*in limine*], it appears that he was examined by multiple personnel at Cermak. So it appears to this [c]ourt that since he is only one of the psychiatrists that's out in Cermak, that most likely there is another psychiatrist that would be available."

Thus, the court ordered the trial to commence on May 27, 2014.

¶ 19 B. Jury Trial

¶ 20 On May 27, 2014, prior to *voir dire*, the defense presented proposed questions that it sought to present to the jury. The defense requested that it be allowed to inform the jury that "[t]he defense of insanity may be presented in this case" and "a defendant is not criminally responsible for his conduct if as a result of a mental disease or defect, he lacks a substantial capacity to appreciate the criminality of his conduct." The defense sought to follow-up this information with the question, "Do you have any feelings or viewpoints concerning the defense of insanity in a criminal case?" The defense further stated that it was "also asking the [c]ourt to allow either ourselves or the [c]ourt to ask of the prospective jurors: Do you have any feelings or viewpoints concerning the defense of insanity as a follow-up question to the statement of law."

¶ 21 The court denied the defense's request, stating that it "does not instruct the jury as to the state of the law during [*voir dire*]." The court explained that the defense was allowed "to inquire of the jury that if there is evidence or testimony presented as to an insanity defense, whether they would listen to and consider that testimony in the same manner in which they would consider any other testimony." The court also stated that it did not believe it was appropriate to ask potential jurors "about their feelings about something during [*voir dire*]" because "[h]ow they

feel is not the issue for this [c]ourt." Because defendant has raised an issue on appeal regarding *voir dire*, and in order to avoid repetition, we set forth in greater detail the circumstances that occurred during *voir dire* later in this order during our substantive analysis on the issue.

¶ 22 Trial began on May 28, 2014. Due to the voluminous nature of the testimony in this case, we set forth only the pertinent parts thereof. After opening statements, the State called Amanda to testify. Amanda testified that in April 2009, her parents Alan and Shelly, her sister Laura, her aunt Sandy, and her maternal grandmother, Marlene Gacek, lived in a house at 1035 Bluebonnet Lane in Hoffman Estates (Engelhardts' house). Amanda's paternal grandmother, Marie Engelhardt, was also staying with them at that time. Amanda testified that she and defendant began dating approximately three years prior to the crimes at issue here. In April 2009, Amanda and defendant had recently moved into an apartment with their daughter, who was then six or seven months old. When asked how she would describe her and defendant's relationship during the weeks prior to April 17, 2009, Amanda responded, "[r]ocky" and explained that they frequently fought because defendant believed that Amanda was cheating on him, which she denied.

¶ 23 Turning to the morning of April 16, 2009, Amanda testified that defendant started the day off happy but things changed when she and defendant got into an argument. After their argument, Amanda and defendant dropped their daughter off at the Engelhardts' house, went to work out, and then returned to their apartment, where they got into another argument. Amanda stated that both arguments were regarding her purported cheating. Amanda testified that during their second fight that day, defendant had become "really mad" and cut his leg with a box cutter. Amanda wanted to take defendant to the hospital but he did not want to go there, and instead wanted to talk to someone, so they went to two churches, and spoke with a pastor at the second

church for about an hour. Amanda was present for the conversation with the pastor, and stated that defendant mentioned that he had been feeling paranoid and that "there was like an internal struggle between good and evil inside him." Amanda and defendant then went to St. Alexius Hospital, where they began arguing again and left before he received medical treatment for the self-inflicted cut on his leg. They then went back to the Engelhardts' house to pick up their daughter. Amanda stated that they stayed and talked with her parents for a while, got some food and movies, and went back to their apartment. Amanda described defendant's demeanor as "calm" while at her parents' house.

¶ 24 Once back at their apartment, defendant and Amanda fed their daughter, put her to bed, and watched television. Amanda also made dinner and they watched movies. When she went to the kitchen to get defendant another plate of food, he came out of the bedroom screaming about how he heard somebody upstairs saying that Amanda had slept with him. Amanda told defendant that was "ridiculous," but nonetheless, they went upstairs and knocked on the door above them, but no one answered. They then went back downstairs, continued to argue, and defendant called Amanda's parents and told them to come get her. At some point, defendant stated that he would try to get Amanda off the lease. Amanda estimated that her parents arrived about five minutes later, which was around 11 p.m. Amanda's mother, Shelly, told defendant that he had to let Amanda take the baby, but defendant responded that she did not have parental rights. Thereafter, defendant "seemed calmer" and told Amanda to take the baby, and that they would talk about it the following day. Amanda, her parents, and the baby returned to the Engelhardts' house, where she put the baby to sleep on the couch and laid down. Amanda stated that after a little while, defendant called and asked to come over to talk. Amanda described him as "calm" on the phone. Defendant called again to let Amanda know he was outside and she met

him on the side of the garage, which she estimated was "probably" after midnight. Amanda testified that she and defendant talked about how they could not keep arguing the way they were, that it would be better if they separated, and that Amanda would come get her belongings from their apartment the following day. Defendant asked if he could come in for a bit because he was cold and Amanda said he could.

¶ 25 Amanda testified that she and defendant went to the family room, where she laid back down, defendant sat on the couch, and they then talked some more. Amanda stated that defendant seemed calm, was coherent, and was making sense during their talk. After they talked, Amanda told defendant she was tired, and he said " 'Just go to bed. I'll let myself out.' " Amanda testified that defendant then gave her a kiss, and she believed he had left. Amanda thereafter fell asleep, and woke up to defendant holding a kitchen knife to her throat. Defendant told her to get up and go into the den where Shelly was. Once in the den, defendant began arguing with Amanda again, and told her that she needed to tell her family that she had been cheating on him. Amanda responded, " 'Okay, fine, if that's what you want to believe, then fine.' " Amanda testified that defendant then told her and Shelly to sit back-to-back on the floor, and they complied. Amanda stated that defendant then grabbed yarn that Shelly had been using to knit, and tied Amanda and Shelly together around their chests, wrists, and necks. Amanda testified that after she and her mother were tied together, defendant "kept saying stuff" but she did not remember what it was about except that it had to do with "[c]heating, lying, how nobody ever accepted him." Amanda testified that after a little while, defendant went upstairs to get her sister, Laura. Defendant then returned to the den with Laura, who looked "confused." Amanda stated that defendant then told Laura to sit on the couch and she complied. Thereafter, defendant told Laura to lay on the couch and she complied. Defendant then "[h]ogtied" Laura with yarn,

with her feet and arms behind her back. Defendant also shoved socks into Amanda's, Laura's, and Shelly's mouths.

¶ 26 Amanda testified that at some point, her aunt Sandy, who was mentally handicapped, came into the room, and sat down in a chair. Amanda stated that defendant told Sandy that she was not going to get hurt "[b]ecause she was innocent." After Amanda, her mother, and her sister were all tied-up, there was more arguing and talking. Amanda testified that defendant said that he was going to untie Laura, then untie Amanda, and they were then going to go into the other room to talk. Amanda stated that after defendant untied Laura, he set the knife down on a small tray, and Laura then grabbed it. Amanda testified that Laura then stabbed defendant in the arm. A fight for the knife ensued between Laura and defendant, with defendant stabbing Laura multiple times. At this point, Shelly and Amanda were screaming at defendant to stop. Amanda testified that defendant did not stop, and next stabbed her mother, Shelly. Amanda stated that at this point, she and her mother were still tied up. Amanda further testified that her grandmother Marlene had heard the commotion, and came into the kitchen. Defendant then stabbed Marlene in the chest and she fell into the corner of the kitchen. Amanda testified that defendant kept screaming, though she did not remember what it was about. Amanda stated that her father, Alan, had started to come downstairs, and upon hearing him, defendant left the den with the knife. Amanda heard fighting in the entrance area, and her dad then came into the den, where he fell onto the floor. Amanda observed an injury to her father's chest, and possibly his neck. Amanda testified that at this point, she was still tied up, with her mother laying down behind her. Defendant eventually untied Amanda so that she could go get their baby, who had woken up, from the family room, and bring her back into the den.

¶ 27 When Amanda returned to the den with their baby, defendant was still holding the knife, and Amanda testified that she "kept asking him to let me call, call somebody." Amanda testified that she tried unsuccessfully to find her cell phone, and that she had tried to use the house phone but there was no dial tone. At some point, defendant told Amanda that he would not let her call anyone until he died. Amanda testified that while she was trying to get him to let her call someone, defendant went to the laundry room, grabbed a bottle of bleach, and poured it on the kitchen floor where there was blood. During this time, Amanda's other grandmother, Marie, had come downstairs and sat on the couch in the den but defendant did not say anything to her. Amanda stated that defendant kept walking between the kitchen and the den, and was "apologizing on and off." Specifically, Amanda testified that after cleaning the kitchen, defendant stated "[t]hat he was sorry, that demons had got him." Defendant then came into the den, laid down, and apologized to Laura, who responded that she forgave him. Thereafter, Amanda "finally found a phone" and called the police, who then came to the house. Amanda testified that she went to the police station that morning, and was interviewed. She could not say how much time had passed between when she saw her father collapse on the floor, and when she eventually called 911.

¶ 28 On cross-examination, Amanda testified that she and defendant had become engaged approximately two and a half years into their relationship. Defendant proposed at the Engelhardts' house, and had given her a ring. Amanda testified that at some point in February 2009, defendant had told her that he believed the engagement ring was bugged by her or someone in her family. Amanda also stated that less than a month after moving into the apartment with defendant, he believed that people were listening to him through a bugging device in the apartment, which Amanda told him was ridiculous. Amanda also testified that she

had told defendant he was "paranoid." Amanda stated that although they had been fighting over the months before the stabbings, she would never have described defendant as depressed. When asked if defendant had told her that he heard voices inside him, Amanda responded, "No." Amanda acknowledged being interviewed by police the morning following the crimes, and that she had told the police:

> "I swear to God this is not like [defendant]. I know him more than most people I never would have thought him capable of this. And I honestly don't think that he realized what he was doing because later he kind of snapped. He freaked out about what he had done. He started crying, and he just kept apologizing. And then he was trying to kill himself."

¶ 29 During redirect examination, Amanda explained that she was in shock when she spoke to police that morning, and was still in love with defendant at that time. Amanda agreed that it would be fair to say she was "somewhat protective" of defendant that morning. When asked if defendant appeared to know what he was doing during the crimes, Amanda responded, "Yes." She also testified that he appeared to be in control of himself and his actions, and did not appear to be hearing voices.

¶ 30 Shelly, Amanda's mother, testified next. She testified that she considered defendant part of the family, and that she had invited him to attend church with them. Shelly testified that on April 17, 2009, defendant and Amanda came to the Engelhardts' house to drop off their daughter for Shelly and Alan to watch. At some point later that day, Shelly received a call from either defendant or Amanda that there was an argument, and that she and Alan were to come get Amanda. Shelly and Alan then traveled approximately one mile to defendant's apartment to pick up Amanda. Shelly stated that when they arrived at the apartment, defendant was yelling about

getting Amanda out of the apartment and her alleged cheating. Shelly and Alan then gathered up some of Amanda's and the baby's things and left. Shelly estimated that she and Alan stayed at the apartment for about 15 to 30 minutes, and returned home sometime after midnight. Shelly testified that she began knitting and watching television in the den, Alan went upstairs to bed, and Amanda put the baby to sleep in the living room. Shelly stated that Amanda went to have a cigarette but it was taking a long time, so she went to check on her, and saw Amanda and defendant out in the garage. Shelly said that it looked "calm" and that they were just talking. Approximately 15 minutes later, Amanda and defendant came into the house, and things began to get "a little more agitated" when defendant again brought up Amanda's alleged cheating. Shelly testified that she then asked defendant to leave and offered him a ride home, but he declined and said he would walk. Shelly further stated that defendant continued to bring up Amanda's behavior and how she was "ruining the family." Shelly then asked him to leave again, and defendant the pulled out a knife that Shelly recognized from their kitchen.

¶ 31 Upon seeing the knife, Shelly told defendant " 'just put it down. This is crazy. This is not right. Put it away.' " Defendant responded, " 'you don't think I'd use it?' " Defendant then came towards Shelly and poked her. Shelly testified that defendant ordered her and Amanda to sit down, and then tied them up with yarn by binding their wrists and shoulders. Shelly had been pleading with defendant to stop what he was doing, but he then placed socks in hers and Amanda's mouths. Shelly stated that defendant then went upstairs and returned with her other daughter, Laura, who defendant ordered to lay down on the couch and "tied her hands to her feet, hog style." Shelly stated that defendant indicated that "he was going to make her pay" by "hav[ing] her watch as he tortured or killed her family." Defendant then untied Laura. Shelly could not see exactly what Laura was doing, but Shelly moved to try to get in the way and

deflect defendant. Shelly testified that when she moved, she got stabbed in the side and in the back, and then lost consciousness. The next thing Shelly remembered hearing upon regaining consciousness was "a lot of crying 'no, no, no.' " Shelly also saw her mother, Marlene, on the kitchen floor, and when she tried to move her head, Shelly saw Laura's and Alan's feet on the other side of where she was laying. Shelly testified that at this point, Laura was pleading defendant to call 911, but he said " 'No.' " Shelly stated that she also remembers her sister, Sandy, coming into the room and defendant telling her to sit down. Shelly also remembered the smell of bleach, and hearing her mother-in-law, Marie, trying to comfort Laura. Shelly further stated that although she was conscious when the paramedics arrived, she did not know how long she had been lying there with her wounds before they arrived, but that by the time they came, the sun was up. When asked if she ever unplugged her house's landline telephone, Shelly replied in the negative and said "they're always operating." Shelly testified that she did not think the phones were working on the night at issue, and stated, "I believe that when either [defendant] went to get Laura or soon after that is when the -- he pulled the wires out of the -- he pulled the plugs out of the wall."

¶ 32 On cross examination, Shelly testified that she did not actually see how the phone lines got to be pulled out of the wall, and acknowledged that she did not know who actually pulled them out. Shelly also stated that she did not recall ever telling the hospital staff that "my daughter's fiancé went crazy and just started stabbing everyone." Shelly also did not recall telling a doctor at the hospital that defendant was acting paranoid, delusional, and controlling.

¶ 33 The parties stipulated to the entry of a recording of a 911 call made from 1035 Bluebonnet Lane at 6:44 a.m. on April 17, 2009. The transcript of the call was also admitted into evidence.

¶ 34 The State called Officer Michael Brady, who was on duty as a sergeant with the Hoffman Estate Police Department on April 17, 2009. Officer Brady was the first officer to arrive on the scene at the Engelhardts' house at 6:48 a.m. Officer Brady testified that when he arrived at the house, Amanda opened the front door for him. He stated that when he entered the foyer of the house, he noticed it was "covered with blood on the floor and the walls." Officer Brady stated that there was also blood on the floor and walls of the dining room, and that he almost slipped in the kitchen because there was so much blood on the floor. Also in the kitchen, Officer Brady observed Marlene, who he described as "an elderly female who was deceased." Officer Brady testified that in the den, he saw four people laying on the floor, and an elderly lady sitting on the sofa. He stated that Alan appeared to be dead, and that Laura and Shelly were unresponsive. Officer Brady further stated that the fourth individual, defendant, was laying adjacent to a TV stand, and had a wound on his right arm that was bleeding. Officer Brady then called dispatch. Subsequently, he heard Shelly moaning and heard Laura say that she was alive. Officer Brady asked Laura if she knew who stabbed her, and she said " 'Dre,' " which was defendant's nickname. Laura also said that defendant had stabbed everyone else. Officer Brady then asked defendant who stabbed him, and defendant responded "Laura." He also asked defendant who stabbed everyone else, and defendant responded, "Laura stabbed me. I took the knife away from her. They must have gotten stabbed when they were breaking up the fight." Defendant also told Officer Brady that he was the one who stabbed Laura. When Officer Brady asked defendant where he put the knife, defendant answered that he had last put it over by the TV and the TV stand, but Officer Brady was not able to locate the knife. Paramedics then arrived and began treating the people in the den, all of whom were subsequently taken to hospitals.

¶ 35 Other police officers and paramedics were also called to testify. Daniel Kurzawinski, the first paramedic to treat defendant, testified that he spoke with defendant at the house, and that defendant answered all of his questions and did not appear to have any difficulty understanding what was being said to him. Paramedic Timothy Stoub also testified that defendant appeared oriented, and they had a clear conversation, in which defendant responded to his questions with appropriate answers. Kurzawinski testified that while defendant was being treated, defendant stated that "we're blaming him because he's black." Similarly, Officer Michael Turman, a police officer who also arrived on the scene at the Engelhardts' house on the morning at issue, testified that when he asked defendant if he had stabbed Laura's family, defendant began yelling that he was only being asked this because he was black.

¶ 36 Dr. Mona Lala, an emergency room physician at St. Alexius Medical Center testified that on the morning of April 17, 2009, she was presented with Laura and Shelly, who were brought to the emergency room by ambulance. Dr. Lala administered treatment to Laura and Shelly. She testified that Laura was not conscious when she arrived, and did not survive the surgery.

¶ 37 Dr. Mark Gordon, an emergency physician at Alexian Brothers Medical Center, testified that he treated defendant upon defendant's arrival at the hospital at 7:31 a.m. on the morning of April 17, 2009. Dr. Gordon stated that he observed a seven-centimeter laceration on defendant's right upper arm and multiple superficial abrasions on defendant's thigh that were not actively bleeding. Dr. Gordon asked defendant what happened, and noted in his report that defendant told him that he was involved in an incident in which he sustained multiple stab wounds and that he had been stabbed in the front of his thigh the previous afternoon. Dr. Gordon clarified that defendant never told him that the stab wounds to his thigh from the previous day were self-inflicted because he would have written that down. Dr. Gordon also testified that defendant was

"very evasive as to what had occurred and to the circumstances involved." Dr. Gordon stated that defendant was asked whether he was currently on any medication, and that his report indicated "No current medications."

¶ 38 When asked what he observed about defendant's mental status, Dr. Gordon responded that in his report, he noted that defendant "appeared anxious," but that his neurological function was intact or normal, meaning that defendant was "alert, oriented. He knows where he is and why he is here. He is able to answer questions." Dr. Gordon further testified that outside of defendant's evasiveness, his answers were "appropriate" and he did not seem disoriented. Dr. Gordon testified that he had previously encountered patients with schizophrenia and psychosis, and that defendant did not appear to be either schizophrenic or psychotic. Dr. Gordon also stated that defendant did not appear to be suffering a break from reality. Dr. Gordon testified that he came up with a treatment plan for defendant, but that defendant refused treatment. Dr. Gordon then asked defendant to sign a form informing him of the risks of leaving against medical advice and defendant complied. Dr. Gordon testified that if a patient is at risk of hurting themselves, he would "hold" them. Dr. Gordon did not place on a "hold" on defendant because he "believed [defendant] had the capability to understand the risks and to accept those risks."

¶ 39 Sergeant Kasia Cawley of the Hoffman Estate Police Department, also testified for the State. She testified that she arrived at the Engelhardts' house at approximately 7:10 a.m. Sergeant Cawley stated that she noticed redness around Amanda's wrists, which was consistent with her having been restrained with something. Additionally, she and other officers recovered items from the house and secured the house before leaving. Sergeant Cawley testified that she returned to the house on April 18, 2009, at approximately 12:15 p.m. in order to collect additional evidence and find the murder weapon. The house was still secured upon her arrival.

Sergeant Cawley testified that she had been told that defendant was laying by the TV and TV stand when he was removed by paramedics, so she checked around that area and found the knife. Specifically, Sergeant Cawley stated that when she moved the TV stand, she saw a "kitchen-type knife with an eight- to ten-inch blade that had red stains on it." Sergeant Cawley also recovered a Clorox bleach bottle, paper towel, and a Lysol bottle, all of which had red stains. Sergeant Cawley testified that she observed that neither the phone in the kitchen, nor the phone in the family room was plugged into the wall.

¶ 40 Nancy Keel, a fingerprint examiner, testified that she tested the knife recovered in this case. Keel testified, in relevant part, "After comparing the latent impressions from the knife to the known impressions of [defendant], I've concluded that they were impressed by the same person, that the palm print on the handle of the knife does belong to [defendant]."

¶ 41 Dr. Kendall Crowns performed autopsies on Alan, Laura, and Marlene. He testified that all three of the deceased victims' injuries were consistent with being caused by the kitchen knife. He further testified that he concluded that the cause of death for Alan, Laura, and Marlene were the stab wounds and the manner of death of each was homicide. Dr. Crowns testified that Laura had a total of 12 stab wounds, and 3 incised wounds, and had received extensive medical treatment prior to her death. Dr. Crown explained that both types of wounds are caused by "sharp-force injury," but that a "stab wound is shorter than it is deep; and [an] incised wound is longer than it is deep." Dr. Crowns further stated that the wounds he documented on Laura included *inter alia*: three stab wounds to the chest; one incised wound to the right abdomen; one stab wound to the left abdomen which penetrated her stomach, liver, mesentery vessels, and abdominal aorta; two stab wounds to the left shoulder; four or five stab wounds to the back, one

which penetrated the left chest cavity; one stab wound to the right hand that could have been a defensive wound; and an incised wound to the right hand that was a defensive wound.

¶ 42 As to Alan's injuries, Dr. Crown testified that he found seven stab wounds and two incised wounds, including "a large gaping incised wound [on Alan's neck] that basically started at the midline and then went to the left" and was about six inches in length. Dr. Crown testified that this was "an extremely severe wound" that would cause a person to "bleed to death in a matter of minutes because [the] jugular has opened." Dr. Crowns also found that Alan had: one stab wound to the back of his head; one stab wound in his thigh; one stab wound in his leg; and one incised wound on his wrist, which he described as "a more slashing defensive-type injury." Dr. Crown also testified that he examined Marlene, who had a single stab wound to her chest and blood in her chest cavity, which was a sign of blood aspiration.

¶ 43 The State then rested its case-in-chief and defendant moved for a directed verdict, which was denied.

¶ 44 Prior to the defense calling its first witness, the court reiterated its previous ruling regarding the admissibility of testimony regarding defendant's mental health history. Defense counsel stated that it was her understanding that "questions regarding past psychiatric hospitalizations and treatment should not be elicited from the witnesses." The court responded that it "has consistently held any diagnosis of the defendant when he was [6] or when he was 15 was not relevant for this jury." The court explained,

> "The issue is his mental state at the time he committed these crimes. Your witnesses may certainly testify, those being pursuant to my previous ruling, the doctors that examined him at the hospital the night of the murders. The doctors or psychiatrists that examined him at Cermak during the intake procedure at the Cook County

> Department of Corrections may testify to their diagnosis of the defendant, if any, at that time, but they will be precluded and this [c]ourt will rule accordingly that they may not testify to any prior hospitalizations from when he was a child or a younger man or anything involving that time frame in his life because this [c]ourt believes it is not *** relevant and admissible testimony and the [c]ourt will not allow it. Is that clear?"

Defense counsel replied that the court's ruling was clear, but stated, "it is the defendant's contention that to present the testimony as per the [c]ourt's ruling is to suggest [it] in a vacuum and it will not provide the jury with the proper context within which to consider the evidence." The court noted that it disagreed, and explained that "you do not have any experts to testify that he was insane at the time of the offense and this [c]ourt does not allow you to go around the rules of evidence using older psychiatric evaluations to try to prove that." The court further ruled that because the jury had already heard about how defendant sustained self-inflicted cuts on his thigh the day prior to the murders, any evidence of other suicide attempts was barred. Specifically, when defense counsel made an offer of proof as to its first witness, Dr. Daniel Morjal, regarding defendant's earlier suicide attempts, defense counsel admitted that defendant had "told one thing to one intake person and one thing to another doctor." When asked if Dr. Morjal was able to verify any of the conflicting information, defense counsel responded, "No." The court also again explained its decision to bar testimony from Jeni Brickman, who the court found was "a therapist from [ABTC] who worked with the defendant on his treatment plan, who transitioned him into independent living, who never actually diagnosed it, [but] merely reviewed all the records."

¶ 45 The defense first called Dr. Morjal, the clinical psychologist who performed an initial evaluation of defendant on April 19, 2009, at Cermak Hospital at Cook County jail. Dr. Morjal testified that he diagnosed defendant with: schizoaffective disorder, depressed type; cannabis

dependence; rule-out depressive disorder not otherwise specified; rule-out psychotic disorder not otherwise specified; and rule-out alcohol abuse. Later, during cross-examination, Dr. Morjal explained that a "rule-out" diagnosis is "a diagnosis in that I have some information but not all of it to be definitive." In other words, it is something that the doctor wants looked at and ruled out. Turning back to his direct examination, Dr. Morjal further testified that his diagnosis of schizoaffective disorder, depressed type was based on defendant's report of psychotic symptoms and depression symptoms, both of which must be present at the same time for a "depressed type" diagnosis. Dr. Morjal stated that he made his diagnosis based on his interview with defendant, during which he found defendant to be alert and cooperative. However, he acknowledged that a person with mental illness could be both alert and cooperative. Similarly, Dr. Morjal testified that merely because somebody is not presenting to him as actively psychotic, it would be consistent that they could have had psychotic episodes earlier. Additionally, Dr. Morjal testified that defendant told him that he had experienced hallucinations but it did not appear that defendant was experiencing them when he spoke to the doctor. Specifically, defendant told Dr. Morjal that "he heard multiple voices that started three months prior and the last time he heard them was earlier in the day," and that defendant referred to the voices as "good and bad." Dr. Morjal stated that defendant said his mood was "sad" and Dr. Morjal observed defendant to be "tearful" at times during the interview. Dr. Morjal made three recommendations: (1) that defendant be referred to a psychiatrist for additional evaluation; (2) that defendant remain in the unit he was in at the time for further observation and stabilization; and (3) that he be considered to be put on close observation.

¶ 46 On cross-examination, Dr. Morjal testified that whenever an inmate killed a family member or close friend, it was the practice to automatically send them to the mental health

center. Dr. Morjal agreed that it is not uncommon for inmates who are charged with a serious crime, like defendant, to be depressed. Dr. Morjal testified that defendant reported to him that he did not have anxiety, panic attacks, fear of losing control or going crazy, or delusions. Dr. Morjal defined a delusion as "a false belief." Dr. Morjal testified that at the time of his interview, defendant denied having any suicidal or homicidal thoughts. Additionally, Dr. Morjal stated, "The information I had in the chart at times was different from the information that he reported to me." He clarified that the information in the chart he was referencing was provided by defendant to someone else. Dr. Morjal testified that he did not observe any psychotic symptoms in defendant and defendant did not appear to be suffering from any delusions. Dr. Morjal also acknowledged that he did not ask defendant what he was experiencing, or what was going through his head, at the time of the murders. Dr. Morjal admitted that he did not know what defendant's state of mind was at the time of the murders, and could not tell the jury that defendant was insane at the time of the murders.

¶ 47 The parties then held a sidebar during which defense counsel asked that the court reconsider its ruling regarding defendant's psychiatric history because the State "cherry picked" through Dr. Morjal's five-page report, and had made it sound as though there is no psychiatric issue with defendant whatsoever. The defense further asserted that the State had opened the door to defendant's psychiatric history, and requested that the court allow it to ask Dr. Morjal about defendant's psychiatric history, his medication history, and his suicide attempts. The defense suggested that Dr. Morjal's diagnoses of defendant were weakened because he was not allowed to testify that his diagnoses were based on defendant's mental health history. In response, the State pointed out that defendant's schizoaffective diagnosis was already before the jury and Dr.

Morjal had testified that his diagnoses were based on defendant's reporting. The court agreed with the State and denied defendant's request.

¶ 48 During redirect examination, Dr. Morjal testified that he did not recall ever asking defendant whether he believed Amanda was cheating on him. Dr. Morjal confirmed that although defendant was alert when he interviewed him, Dr. Morjal determined that defendant had a mental illness.

¶ 49 The defense next called Tracy Yedor, a nurse who treated Shelly when she was brought to the emergency room on April 17, 2009. Yedor testified that she made a notation in her progress report that stated, "when *** questioned about what happened [Shelly] stated, 'my daughter's fiancé went crazy and just started stabbing everyone. My husband is dead, I know he's dead.' "

¶ 50 The defense also called Dr. Matthew Mills, a psychiatrist who evaluated defendant at Cermak Hospital on April 21, 2009. Dr. Mills testified that he diagnosed defendant with cannabis dependence, rule-out adjustment disorder, and rule-out alcohol abuse. Dr. Mills explained an adjustment disorder occurs when someone reacts to stressors in a disproportionate manner. Dr. Mills also diagnosed defendant with "Cluster B traits," which he explained refers to a subcategory of personality disorders including borderline, antisocial, histrionic, and narcissistic personalities. Dr. Mills stated that he based his diagnoses on "[a]ny information that would have been in the chart prior to [the] evaluation *** and certainly the evaluation itself." Dr. Mills explained that he did not diagnose defendant with a personality disorder because he needed more information, and in his opinion, it would be inappropriate to meet someone for an initial interview and diagnose them with a personality disorder — "giving a specific diagnosis of a personality disorder takes more time." Dr. Mills testified that he had documented in his notes

that defendant had some past treatment with Risperdal and Depakote, but did not elaborate on why those drugs were prescribed. Dr. Mills also stated that at the time he saw defendant he was already ordered to be in a paper gown with a wool blanket, but that Dr. Mills opted to discontinue the paper gown because defendant did not indicate at that time that he was suicidal and Dr. Mills "did not think he presented an imminent danger to [him]self."

¶ 51 On cross-examination, Dr. Mills testified that "being charged with first degree murder" was an example of a stressor. Dr. Mills also stated that one of the hallmarks of someone with a borderline personality that he saw in defendant is "repetitive para[-]suicidal gestures where they can make scratches or cuts to themselves *** [but] not associated with intent to die." Dr. Mills further testified that when he asked defendant if he experienced auditory hallucinations, defendant laughed and said " 'it's just my conscious [*sic*].' " Dr. Mills also explained that by the end of his observation of defendant, his opinion of defendant's borderline and antisocial personality traits had strengthened. Dr. Mills stated that he did not interview defendant about what he was thinking at the time of the murders, and thus, had no opinion as to whether defendant was insane at that time.

¶ 52 Officer Brian Vivona, who was working as an Elk Grove police officer in April 2009, also testified for the defense. Officer Vivona stated that, on April 17, 2009, he was assigned to go to Alexian Brothers Medical Center to take photographs of an individual who, at that time, was considered either a witness or a potential victim in this incident. Officer Vivona testified that he took photos of wounds on defendant's right arm and right thigh. On cross-examination, Officer Vivona stated that defendant appeared calm and answered his questions appropriately when he photographed him.

¶ 53 The defense then made an offer of proof regarding the medications that defendant was then taking at the time of trial. The court stated that "the fact that the defendant is taking psychotropic medications today, five years after the date of the offense, is not relevant for this jury to determine whether or not he was insane at the time of the offense." The court again rejected the defense's request to allow defendant to testify about his history of mental illness and several previous hospitalizations for mental illness.

¶ 54 Defendant then testified on his own behalf. He stated that in April 2009, he was 20 years old and lived with his then-fiancée Amanda and their daughter in an apartment. Defendant testified that when he woke up on the morning of April 16, 2009, he felt "okay." He stated that he and Amanda dropped their daughter off at the Engelhardts' house and then went to work out. He testified that there was "tension" between him and Amanda that day and there was a disagreement because he believed that she was cheating on him and being dishonest but she said he was making stuff up and being delusional. Defendant stated that he had witnessed Amanda cheat on him on a previous occasion. He further explained that he kept seeing someone named Cary, who he knew lived in Chicago, in Hoffman Estates and kept hearing his voice, which defendant explained to Amanda that he did not understand. Defendant also testified that he wanted to check the smoke detectors for cameras and listening devices but Amanda would not let him. He also asked Amanda if she had put a camera in her engagement ring but she told him he was "crazy." Defendant testified that Amanda twisted the ring so that the stone was facing towards him and he interpreted that to mean he was being recorded. Defendant stated that he and Amanda then went to Walgreens, where he purchased a box cutter, a propane tank, and some bleach. Defendant said "I have no idea" when asked why he bought these items. Defendant further stated that when he got back to the apartment, he "inhaled pretty much most of the

propane tank" because he was depressed, and was attempting suicide. Defendant stated that he then went into the bathroom, filled up the tub with cold water, and began to cut himself. Defendant described both of these actions as something he did to make himself feel better. Defendant testified that Amanda watched as he cut himself. He also stated that Amanda sometimes talked to him through her mind and sometimes through her mouth.

¶ 55 Defendant testified that after he cut himself, he and Amanda went to the Engelhardts' house, and spoke with Shelly. Then they went to Amanda's church, but the pastor was not there, so they left. Defendant stated that they then stopped at another church, and he told the pastor that he "had been seeing demons a lot lately." Defendant also talked about the voices he had been hearing and how he thought that they were "demons and angels trying to give ***messages." Defendant testified that the pastor/priest "pushed the Bible in front of me and told me that, 'God doesn't work that way, and I can show you every reason why he doesn't work that way.' " This caused defendant to get upset and they left. Defendant stated that they went to Alexian Brothers Hospital, but he did not see any doctors because he refused medical treatment. Thereafter, defendant and Amanda returned to the Engelhardts' house to pick up their daughter. Defendant testified that they again spoke with Shelly because she wanted to talk about why defendant was refusing medical treatment. Defendant also testified that Shelly tried to convince defendant and Amanda to stay at the Engelhardts' house because she believed defendant was "unstable." Defendant, Amanda, and their daughter then went back to their apartment, which was about five minutes from the Engelhardts' house. Defendant testified that he then made dinner, fed the baby, and put the baby to sleep. Defendant also stated that around that time he heard someone say, " 'He loves her. He's not going to let her go.' And [he] heard another voice say *** 'He doesn't have a choice. He doesn't have a choice.' " Defendant described the voices

as two male voices. Defendant stated that when he heard these voices, he "freaked out" and started screaming. He also tried to investigate where the voices came from by going upstairs and knocking on the neighbor's door. Defendant testified that "a white guy" whose name he did not know answered the door.

¶ 56 Defendant stated that when he got back down to the apartment, he and Amanda argued some more, and then things "cooled off a little bit." However, defendant heard a lot of "banging on the floor" and "laughing" coming from the apartment upstairs, and Amanda "pretended as if she didn't hear it and tried to make [defendant] feel as if [he] was making stuff up." Defendant testified that this agitated him, so he called Amanda's parents to come pick her up. Amanda's parents came over a few minutes thereafter, and eventually left with Amanda, the baby, and some of the baby's things. Defendant testified that after they left, he heard more banging on the floor and knocking on his door, so he started screaming. Defendant also had music playing at this time, and the police came to his door about five to seven minutes after Amanda left. Defendant clarified that the knocking/banging he heard was not from the police. Defendant testified that the police told him that they had received a noise complaint. He apologized and told them he was just "venting" about Amanda cheating on him. Defendant stated that the police then ran a search for his name, and found a warrant for driving on a suspended license. Defendant stated that he then went to police station and bonded out. He texted Amanda and told her of the warrant and noise complaint. He also told Amanda that he would come to her house so that they could talk. Defendant testified that it was late at this point but he did not know if it was after midnight when walked over to the Engelhardts' house.

¶ 57 Defendant testified that he went to the Engelhardts' house to talk about what had taken place at the apartment, and did not intend to harm anyone. Amanda came outside to talk to

defendant once he texted her that he was there at the house. Defendant stated that they stood on the side of the house, smoked a cigarette, and talked about what happened. Shelly then came outside and told defendant and Amanda to come inside. Defendant and Amanda continued to talk in the laundry room, and Amanda then went upstairs to change clothes. Defendant stated that he went into the living room and watched their baby sleep until Amanda came back down. Defendant testified that Amanda told him that she really wanted "the family thing to work out" because "she had understood that [defendant's] family wasn't there for [him] and that she didn't want that for [their daughter]." Defendant stated that Shelly then came in and looked in on them and walked away. Defendant followed Shelly into the den, where she had been knitting. Defendant stated that he and Shelly had a conversation wherein he told her that he knew that she was planning to take a job in Boston, and that he "knew why she wanted [him] to pretty much place [himself] in an institution." Defendant testified that Shelly "got really upset," said that he was making stuff up, and told him to leave. Shelly offered a ride at some point but defendant did not leave.

¶ 58 Defendant testified that he then went into the kitchen and grabbed a knife. He testified that "Amanda had came [*sic*] back into the den because we were yelling and arguing with one another. She wanted to cool off the argument. But I grabbed the knife because I wanted them to take me serious[ly]." Defendant stated that Shelly ignored him and continued to knit, and did not take him seriously. Defendant also stated, "My intentions weren't to hurt anyone." Defendant testified that when he saw they were not listening to him, he started to scream, told them they should take him seriously, and asked them to sit on the floor. Defendant stated that he then wrapped Shelly and Amanda in yarn because they were not listening to him and he had been emotionally pouring his heart out to them. Defendant told Shelly about Amanda's lying and

cheating, and how Amanda had tried to make him seem delusional. Defendant also testified that he and Shelly had a previous conversation wherein he told her about a conversation that he believed he had with God. Defendant stated that Shelly said she had experienced something similar and gave him a prayer to say, but that it seemed to him that "things got worse" after he said that prayer. Defendant also stated that at this time, Shelly was saying things like, " 'I rebuke demons,' " which made him angrier. Defendant testified that he then grabbed a sock and placed it in Shelly's mouth because he "didn't want to hear the church stuff she was saying at the time." Defendant then went into the kitchen and began to go through the drawers but he did not know why. Defendant stated that Shelly spit the sock out, and loudly yelled at him to stop going through the kitchen drawers. Defendant then saw Laura coming downstairs, and asked her to come into the den, which she did. Defendant testified that once Laura saw what had taken place, she was scared. Defendant then tied Laura up, but when asked why, he stated "I don't know. I wanted her to listen."

¶ 59 Defendant stated that, at this time, he was hearing a lot of loud noise in his head, and was trying to explain himself but his words were not coming out right. Defendant testified that he then felt defeated, and when asked to untie everyone, he said, "Okay." Defendant stated that he had put the knife down and cut Laura loose when he heard Amanda say, " 'Laura, no.' " Defendant then turned his attention to what Amanda was referring to. He did not see Laura stab him in the arm, but felt it. Laura pulled the knife out of defendant's arm, and she and defendant then fought for control of the knife. Defendant testified that during this time, Shelly and Amanda were "doing a lot of kicking and screaming." Defendant also testified that "it got loud again" while he was wrestling with Laura, and that he heard a loud, irritating noise, like a siren. Defendant stated that he eventually got the knife away from Laura, he "just wanted to make the

noise stop," and so he swung his arms. When asked if he saw Alan or Marlene that night, defendant responded that he had, but that he did not know what happened to them. When asked if he cut Shelly, defendant responded, "Yeah, I think so." Defendant also acknowledged that he cut Alan and Marlene. Defendant testified that he saw Marie come into the room, and that she walked up to him, placed her hand on his shoulder, and said " 'That's enough.' " Defendant admitted that he did not call 911, but denied preventing anyone else from calling. Defendant testified that he remembered being on the phone with the police, and then seeing the police and paramedics come that night. Defendant stated he was first taken to the hospital, then to the police station, and then back to the hospital.

¶ 60 On cross-examination, defendant testified that he was not "angry" about Amanda and her alleged cheating, but was angry about the possibility of the Engelhardt family moving to Boston because he thought that they would take his child with them. Defendant explained that he told Shelly "that was her reason for wanting me to go back to Alexian Brothers Mental Health." Defendant testified that in December 2008, he went to "Alexian Mental Health" because he had attempted suicide. Defendant also acknowledged that his name was on the lease for the apartment that he and Amanda shared. Defendant acknowledged that when he and Amanda went to the emergency room after speaking with the pastor on the day he cut his leg, he told the check-in personnel that he had cut his leg on barbed wire. Also on cross-examination, defendant stated that he had no control over himself during the time when Amanda and Shelly were tied-up, but he denied that any voices in his head told him to tie up Laura on the couch and denied any voice told him to untie everyone. Additionally, when asked what he did with the knife once he got it back from Laura, defendant responded, "I just started swinging." Defendant also testified that he did not know why he stabbed Shelly, but that he only heard loud sirens and did not hear voices

telling him to do it. Defendant denied hearing a voice tell him to stab Marlene. Further, defendant acknowledged that after the stabbings, people in the house were pleading with him to let them call 911, but denied unplugging the phones. Defendant admitted that he never told the paramedics or police that he was hearing voices, loud noises, or sirens. At the end of defendant's testimony, the defense rested.

¶ 61 In rebuttal, the State called Officer Braun[3]. Officer Braun testified that at approximately 12:15 a.m. on April 17, 2009, he received a call of a noise complaint of loud music coming from defendant's apartment. He stated that as he and another officer were approaching defendant's apartment, they could hear music coming from inside. The officers knocked on the door, defendant immediately answered, and the officers told him to turn the music down, which defendant did. Officer Braun testified that he ran defendant's name through their computer system, and that he had "a minor traffic warrant for him." The officer further stated that defendant seemed to understand everything he was telling him, and during the approximately 10 minutes they were in his apartment, defendant did not appear to be hearing any voices or experiencing any hallucinations. Officer Braun stated that he then brought defendant to the police station, and defendant answered all of his questions appropriately. Officer Braun estimated that defendant was at the police station for a total of 45 minutes, and left at around 1:20 a.m. Although Officer Braun offered defendant a ride, defendant stated that he would walk. Officer Braun testified that if he had believed that defendant was suffering from a mental disease, he would not have let him leave the police station, and would have instead called the paramedics for an evaluation. The officer stated he did not call the paramedics that night because defendant was "acting as a normal person."

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[3] Officer Braun's first name neither appears in the transcript of his trial testimony, nor in the parties' appellate briefs.

¶ 62 On cross-examination, Officer Braun stated that defendant had told him that he found out that his girlfriend was cheating on him with someone from upstairs. On redirect, Officer Braun testified that defendant never told him that he was hearing loud voices or sirens in his head.

¶ 63 The State next called Dr. Arvind Patel in rebuttal, who testified that at around 10 p.m. on April 17, 2009, he was on trauma call in the emergency room at Alexian Brothers Medical Center. Dr. Patel was called in to treat defendant because he had a laceration on his arm. Dr. Patel testified that he tried to examine defendant, but defendant would not allow him to examine him or open the dressings on his arm. Dr. Patel stated that defendant told him that he did not want treatment, and refused to be treated. Dr. Patel further testified that defendant appeared to understand what he was saying to him, and that defendant's responses to the doctor's questions were appropriate. Dr. Patel also stated that defendant did not appear to be hallucinating, did not mention hearing voices, loud noises, or sirens, and did not appear to be suffering a break from reality. Dr. Patel testified that defendant's injuries were not life-threatening and he accepted defendant's refusal of treatment, which he would not have done if a patient (with similar injuries) was psychotic, or out of touch with reality. When asked whether defendant would have been discharged to police if Dr. Patel believed he was mentally ill, Dr. Patel responded, "I discharged him subject to psychiatrist evaluation, and they had to okay it before he is discharged to either police custody, home, or nursing home."

¶ 64 On cross-examination, Dr. Patel clarified that he was not the first treating doctor to see defendant that night, and that Dr. Patel's role was to conduct a follow-up. Dr. Patel also stated that defendant was not to be released from Alexian Brothers until he was cleared by a psychiatrist. On redirect examination, Dr. Patel testified that defendant was referred to a

psychiatrist because he had been saying that he wanted to kill himself when he got to the hospital that afternoon.

¶ 65 The State called Officer Scott Reichel as its final rebuttal witness. Officer Reichel, a Hoffman Estates police officer, testified that at approximately 3 p.m. on April 17, 2009, he received an assignment to assist with the transport of a prisoner (defendant) from Cook County jail to Alexian Brothers Medical Center. Officer Reichel stated that he was told that the transport was needed because of a wound on defendant's arm. The officer testified that he was in the back of the ambulance during the entire ride with defendant, and that defendant did not mention voices and appeared rational. Officer Reichel testified that defendant "asked me if I could tell him how long he was going to be held or when he was going to be charged." Officer Reichel told defendant that he was not going to discuss the case with him, and defendant then became upset and told the officer that he was going to have to "commit him." Officer Reichel testified that when he asked defendant why he would need to be committed, defendant stated, "that he was upset because he hadn't seen his family all day and that he was going to kill himself and that once he was back to our police station after being released from the hospital and he didn't have any restraints on, he was going to bash his head into the metal bars of our lockup area and try to kill himself." Officer Reichel further stated that defendant also told him that he knew that because he had made that statement to him that Officer Reichel had to document it, otherwise it would be "a liability." Officer Reichel described defendant as "belligerent and disruptive" while in the ambulance. Once at the hospital, defendant again stated that he wanted to make sure that Officer Reichel notified his chief that defendant wanted to kill himself, and that defendant wanted everyone to know that he wanted to kill himself.

¶ 66 On cross-examination, Officer Reichel admitted that he did not remember defendant's exact words when defendant told him to inform his supervisor about his desire to commit suicide. Officer Reichel also acknowledged that once defendant got to the hospital he did, in fact, start slamming his head against the wall, and that defendant had to be sedated. The State then rested its case.

¶ 67 The parties then presented their closing arguments. Defendant raises an argument in this appeal regarding the State's closing argument, and thus, in order to avoid unnecessary repetition and in the interest of efficiency, we set forth the language of the State's closing that defendant asserts is problematic in section (II)(C) of this order.

¶ 68 When the jury received its instructions prior to deliberation, it received the following instruction regarding the defense of insanity:

> "The defense of insanity has been presented during trial. The burden of proof is on the defendant to prove by clear and convincing evidence that the defendant is not guilty by reason of insanity. However, the burden remains on the State to prove beyond a reasonable doubt each of the propositions of each of the offenses charged. You may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless you have first determined that the State has proved the defendant guilty beyond a reasonable doubt of the offense with which he is charged.
>
> A person is insane and not criminally responsible for his conduct if at the time of the conduct, as a result of mental disease or defect, he lacks substantial capacity to appreciate the criminality of his conduct."

Following deliberation, the jury found defendant guilty of the murders of Alan, Laura, and Marlene, and guilty of the attempted murder of Shelly.

¶ 69 C. Post-Trial Motions and Sentencing

¶ 70 On July 1, 2014, defendant filed a motion for new trial, setting forth numerous instances of alleged error. On July 9, 2014, the court denied defendant's motion for a new trial, and sentenced defendant to three concurrent natural life terms for the murders, with a consecutive 60-year sentence for attempt murder. Defendant's motion to reconsider sentence was denied. Defendant filed his timely notice of appeal on July 31, 2014.

¶ 71 II. ANALYSIS

¶ 72 Defendant raises the following arguments on appeal: (1) the trial court deprived defendant of his right to present his insanity defense when it barred numerous pieces of evidence relevant to that defense; (2) the trial court deprived defendant of a fair trial before an impartial jury by improperly barring questioning about the potential jurors' feelings and viewpoints about the insanity defense; and (3) the State committed pervasive prosecutorial misconduct during closing arguments. We address each issue in turn.

¶ 73 A. Defendant's Insanity Defense

¶ 74 "A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity to appreciate the criminality of his conduct." 720 ILCS 5/6-2(a) (West 2008). It is the defendant's burden "to prove by clear and convincing evidence that the defendant is not guilty by reason of insanity." 720 ILCS 5/6-2(e) (West 2008).

¶ 75 Defendant first contends that he was deprived of his right to fully present his insanity defense because the court barred numerous pieces of evidence relevant to his defense. "A criminal defendant is constitutionally guaranteed a meaningful opportunity to present a complete defense." (Internal quotation marks omitted.) *People v. Burgess*, 2015 IL App (1st) 130657, ¶

133. Defendant acknowledges that evidentiary rulings are typically reviewed for an abuse of discretion, but argues that we should conduct *de novo* review on this issue because it involves a question of whether defendant's constitutional rights were violated. Conversely, the State argues that because defendant was, in fact, allowed to present his insanity defense to the jury, our review should be for an abuse of discretion, where the only issue that remains is whether the trial court's evidentiary rulings were proper. We agree with the State. "[W]hen a party claims he was denied his constitutional right to present a complete defense due to improper evidentiary rulings, the standard of review is abuse of discretion." *Id.* The decision of whether to admit evidence is within the sound discretion of the trial court and we will not reverse that determination without a showing of an abuse of that discretion, which occurs when "no reasonable person would take the view adopted by the court[,]" or when such a decision is arbitrary, fanciful, or unreasonable. *Id.* ¶ 134; *People v. McCullough*, 2015 IL App (2d) 121364, ¶ 104. Further, "the trial court's ruling will not be overturned unless the abuse of that discretion led to manifest prejudice against defendant." *Burgess*, 2015 IL App (1st) 130657, ¶ 134.

¶ 76 1. Defendant's Mental Health History

¶ 77 Defendant argues that because the defense of insanity requires a defendant to establish a mental disease or defect, the trial court erred when it barred testimony regarding his mental health history, which included diagnoses of mental diseases or defects. Specifically, defendant argues the court improperly barred the testimony of four witnesses: Dr. Robert Hanlon, Jeni Brickman, Anne Rauen, and Dr. Ravinder Grewal. The State responds that the court did not abuse its discretion where defendant was able to introduce evidence to support his defense, and was merely barred from presenting testimony the court properly deemed too remote, speculative, or cumulative.

¶ 78 A criminal defendant's right to a fundamentally fair trial and due process includes the right to present witnesses on his behalf. *People v. Lerma*, 2016 IL 118496, ¶ 23. However, "the right to present a defense does not include the right to introduce irrelevant evidence." *In re Detention of Melcher*, 2013 IL App (1st) 123085, ¶ 44. "Relevant evidence is that which has 'any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.' " *Id.* (quoting Ill. R. Evid. 401 (eff. Jan. 1, 2011)). "A trial court may reject offered evidence on the grounds of irrelevancy if it has little probative value due to its remoteness, uncertainty, or speculative nature." *People v. Enis*, 139 Ill. 2d 264, 282 (1990).

¶ 79 Defendant argues that he should have been able to present the testimony of Dr. Robert Hanlon, who evaluated defendant after the offense, reviewed defendant's medical records, and spoke with defendant's most recent therapist/social worker, Brickman. The State points out that during the hearing on its motion *in limine*, defense counsel affirmatively stated that Dr. Hanlon's testimony would not be used as expert testimony. Specifically, defense counsel stated:

> "Dr. Hanlon is not -- his testimony would not be introduced as expert testimony. We're not seeking to introduce his testimony in any kind of a claim of diminished capacity. He was an expert who reviewed [defendant's] mental disease and defects in the past, and that based on mental health records that he reviewed, that therefore, he did, in fact, have this mental disease or defect in the past."

In its reply brief, defendant asserts that the State's characterization is incorrect, and that defense counsel stated only that she did not intend to use Dr. Hanlon as an expert in regards to "diminished capacity." Although it cannot be ignored that defense counsel stated, "[Dr. Hanlon's] testimony would not be introduced as expert testimony," it is unclear to this court

what defense counsel actually intended due to the contradiction apparent in the foregoing statement by defense counsel and the representations made in defendant's reply brief. However, what is clear is that the defense sought to admit Dr. Hanlon's testimony to establish that defendant had a "mental disease or defect in the past," and sought to admit his opinion that defendant's mental disease "influenced" his conduct on April 17, 2009. Thus, the question becomes whether the court's exclusion of Dr. Hanlon's testimony, whether as an expert witness or a lay witness, amounted to an abuse of discretion. We find that it did not.

¶ 80 " 'In Illinois, generally, an individual will be permitted to testify as an expert if his experience and qualifications afford him knowledge which is not common to lay persons and where such testimony will aid the trier of fact in reaching its conclusion.' " *People v. Lerma*, 2016 IL 118496, ¶ 23 (quoting *Enis*, 139 Ill. 2d at 288).

¶ 81 Here, it is undisputed that Dr. Hanlon would not have opined as to defendant's sanity, or lack thereof, at the time of the crime. Defendant, instead, sought to introduce Dr. Hanlon's opinion that "[defendant's] mental disorders, specifically chronic PTSD, [s]chizoaffective [d]isorder, and mixed personality disorder influenced his conduct at the time of the alleged crime on [April 17, 2009]." Dr. Hanlon's opinion that defendant's mental diseases "influenced" his conduct at the time of the crimes was speculative, and thus, not proper expert testimony. See *People v. Sargeant*, 292 Ill. App. 3d 508, 511 (1997) (holding an expert witness's opinion "should not be admitted if it is inconclusive or speculative"). It is a matter of common knowledge that any number of factors "influence" a person's behavior at any given time. What would have been relevant and might have aided the trier of fact in resolving the issue of the insanity defense was an expert's opinion as to defendant's mental state at the time of the crime, or an opinion as to whether defendant was insane then. If defendant sought to introduce an

expert's opinion that he was insane at the time of the stabbings and the trial court barred it, then we might reach another outcome here. However, no attempt to present such an opinion was ever made in this case and there is no evidence that any witness who testified or was barred from testifying would have rendered such an opinion. As a result, we agree with the trial court's finding that Dr. Hanlon's opinion would not assist the trier of fact in determining the ultimate issue here.

¶ 82 If, as the State suggests, defendant merely sought to introduce Dr. Hanlon's opinion as lay testimony, it was not an abuse of discretion for the trial court to bar it. "Lay opinion testimony, like all other evidence, must be relevant to be admissible." *People v. Trzeciak*, 2014 IL App (1st) 100259-B, ¶ 90. A test that a trial court may use when determining relevance is to ask how it would view the evidence if it were the jury. *Id.* In other words, "would the proposed evidence assist the court in resolving questions of fact? If not, then the evidence should be excluded." *Id.* Here, the ultimate issue in this case was whether defendant's mental disease resulted in his lack of substantial capacity to appreciate the criminality of his conduct at the time he committed the stabbings. 720 ILCS 5/6-2(a) (West 2008). We find that Dr. Hanlon's testimony, when viewed as lay opinion testimony, was irrelevant. Additionally, "[I]f a witness is not testifying as an expert, the witness may offer an opinion only if that opinion is: (1) based on the witness's personal observations; (2) helpful to the trier of fact; and (3) 'not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.' " *Atchely v. University of Chicago Medical Center*, 2016 IL App (1st) 152481, ¶ 39 (quoting Ill. R. Evid. 701 (eff. Jan. 1, 2011)). Here, Dr. Hanlon did not observe defendant personally at the time of the crime. His testimony would, therefore, be irrelevant, and would not aid the trier of fact in resolving the ultimate issue of whether defendant's mental diseases prevented him from

appreciating the criminality of his conduct at the time of the stabbings. Further, the opinions that Dr. Hanlon sought to give were, in fact, based on specialized, medical knowledge. As a result, it was not an abuse of discretion to bar Dr. Hanlon's testimony if he was offered as a lay witness.

¶ 83 Further, if we had found that the barring of Dr. Hanlon's testimony was an abuse of discretion, which we have not, it must also be shown that defendant suffered manifest prejudice as a result. See *Burgess*, 2015 IL App (1st) 130657, ¶ 134 ("the trial court's ruling will not be overturned unless the abuse of that discretion led to manifest prejudice against defendant"). Our review of the record indicates that the jury heard ample testimony regarding defendant's mental diseases or defects, and thus, defendant suffered no prejudice where the jury heard other doctors testify as to defendant's mental diseases. On May 19, 2014, the same date that the court reaffirmed its decision to bar Dr. Hanlon, the court also ruled that testimony from personnel from Cermak Hospital would be admissible because those observations were made shortly after the stabbings, and would aid the trier of fact on the issue of insanity. Dr. Morjal and Dr. Mills both testified that they diagnosed defendant with mental diseases. Specifically, Dr. Morjal testified that he diagnosed defendant with schizoaffective disorder, depressed type; cannabis dependence; rule-out depressive disorder not otherwise specified; rule-out psychotic disorder not otherwise specified; and rule-out alcohol abuse. Similarly, Dr. Mills testified that he diagnosed defendant with cannabis dependence, rule-out adjustment disorder, and rule-out alcohol abuse. Dr. Mills also diagnosed defendant with "Cluster B traits," which he explained refers to a subcategory of personality disorders including borderline, antisocial, histrionic, and narcissistic personalities. Thus, where defendant was able to present evidence of his mental diseases to the jury, no prejudice resulted, and the court's ruling was not an abuse of discretion.

¶ 84 Next, defendant argues that the trial court erred in barring the testimony of Brickman, Rauen, and Dr. Grewal. Prior to trial, defendant made offers of proof for these three individuals. We examine each witness's proffered testimony in turn.

¶ 85 As to Brickman, defense counsel stated that she knew defendant from 2003 to the present, and was his therapist when he was transferred to ABTC. The defense stated that Brickman reviewed his mental health history and diagnoses of PTSD, cannabis abuse, and conduct disorder. Brickman would have testified regarding her treatment plan for defendant, and other points of treatment from other ABTC therapists. When the court sought clarification regarding Brickman's credentials, defense counsel acknowledged that Brickman was a social worker with no advanced degrees beyond social work. Defense counsel also confirmed that the diagnoses that Brickman would testify to were not her own. The court then stated,

> "Being familiar with his treatment is different than aiding the trier of fact in determining whether [defendant] was insane at the time of the offense, so I am not sure how, according to the rules of evidence, the testimony of the social worker that worked with him starting in 2003 when he was 14 or 15 in transitioning him out of a -- one setting into independent living will assist the trier of fact in determining whether he was insane at the time of the offense."

Defense counsel responded that she was not offering Brickman's testimony as evidence of defendant's mental state on the date of the homicides, but instead, offered Brickman's testimony to "provide further evidence to the jury of the fact that [defendant] had a mental disease or defect." The defense further explained, "I'm not for a moment suggesting that [Brickman] can opine or provide anything about what was going on in April of 2009 when the murders happened." Defense counsel also suggested that Brickman should be able to testify *in loco*

*parentis* because defendant did not have parents to testify as to his behavior. The trial court determined that Brickman's testimony would not be allowed because it was inadmissible under the rules of evidence. Specifically, the court found the proffered testimony "to be in the nature of mitigation evidence that would be admissible at sentencing but not admissible during trial."

¶ 86 We agree with the trial court's assessment of Brickman's testimony. The defense did not seek to qualify Brickman as an expert and we fail to see how Brickman's lay opinion testimony would be relevant to the ultimate issue of defendant's sanity at the time of the stabbings. As a lay witness, Brickman could not have testified as to defendant's diagnoses that she reviewed in defendant's medical history. See *People v. Anderson*, 113 Ill. 2d 1, 8-9 (1986) (recognizing that "expert witnesses may disclose the contents of otherwise inadmissible materials upon which they reasonably rely"). Further, any evidence of defendant's diagnoses would have been cumulative because Dr. Morjal and Dr. Mills also provided diagnoses testimony. See *People v. Tolliver*, 347 Ill. App. 3d 203, 227 (2004) (stating that "[t]he admission of cumulative evidence is within the discretion of the trial court and its ruling will not be reversed where *** there was no clear abuse of discretion"). The defense made clear that Brickman could not testify as to any happenings in April 2009, which was the relevant timeframe. Rather, as the trial court found, her testimony could have been introduced as mitigation, and thus, barring Brickman's testimony was not an abuse of discretion.

¶ 87 Regarding Rauen, a caseworker assigned to defendant through DCFS in January 2009, the defense proffered that she would testify as to defendant's familial history, including his mother's drug use and defendant's physical and sexual abuse as a child. The defense stated Rauen would also testify as to defendant's placement in an independent living program in August 2008, and "to his need for parenting classes and other medical things." Rauen would

also testify as to her knowledge of a December 25, 2008, incident during which defendant ingested a large amount of Robitussin cough syrup in an apparent suicide attempt. Additionally, Rauen would state that once she saw defendant's Hoffman Estates apartment, she became concerned with his "deteriorating mental state" because he used to keep his other living space in a more tidy fashion. Rauen would also state that "she's not sure whether [defendant's] being manipulative or if his behavior is the result of a more deep-seated mental health issue or he is decompensating because of the stress of the impending emancipation." The defense suggested Rauen "could also talk about her opinion of his mental -- how he presented to her in the months preceding the homicide." The trial court summarized Rauen's testimony as including "how defendant became a ward of the State, his mother's substance abuse, the fact that his siblings tested positive for cocaine at birth, prior incidents with mom and mom's boyfriend that were indicated by [DCFS], [and] his numerous placements within that agency." The court also noted that the defense argued that Rauen, like Brickman, should be able to testify *in loco parentis*. The court determined that Rauen's testimony was also "in the nature of mitigation evidence" and would be admissible at sentencing, not trial. The court also noted that because defendant refused to sign a medical release to Rauen, her testimony would be hearsay and inadmissible.

¶ 88 We find that the trial court's decision to bar Rauen's testimony was not an abuse of discretion. Similar to Brickman, the defense did not seek to qualify Rauen as an expert, and thus, she would not have been able to give opinion testimony or the bases relied upon in forming any opinions. See *id.* Additionally, any testimony regarding defendant's familial history or placements with DCFS agencies is irrelevant to the ultimate issue in the case, *i.e.* whether defendant's mental disease resulted in his lack of substantial capacity to appreciate the

criminality of his conduct at the time he committed the stabbings. See 720 ILCS 5/6-2(a) (West 2008).

¶ 89 Dr. Grewal was a doctor who treated defendant after his December 25, 2008 suicide attempt. The defense proffered that if called, Dr. Grewal would testify that on December 25, 2008, defendant was having suicidal ideations and was depressed, and as a result, submitted himself to the staff at Alexian Brothers Behavioral Health Center for an evaluation. Defense counsel also stated, "The Hoffman Estates police, I believe, arrested him, but before that he did have a diagnosis of -- I'm just going to read it, Judge, because I'm not really sure what it means. Toxeff, ***, nonmed substance not otherwise specified was the first diagnosis." Defense counsel indicated that was Dr. Grewal's diagnosis, as well as a diagnosis of psychosis not otherwise specific, rule-out "BAD 1 with psychotic features," cannabis abuse, and a recommendation for inpatient psychiatric treatment. The trial court found that defendant's December 25, 2008, emergency room visit was "too remote" and "any testimony regarding the staff who treated him at that time, a Dr. [Grewal] and Dr. Ahmed[,] will not be allowed before the jury."

¶ 90 We find that the trial court's determination was within its discretion. It is not unreasonable to view a suicide attempt that occurred months prior to the date at issue to be too remote in time. As stated many times, the ultimate issue in this case was the defendant's mental state on April 17, 2009, when he committed the crimes. The fact that defendant attempted suicide months before that date does not make him more or less likely to have lacked sanity on the date of the crimes. Further, a doctor who evaluated defendant months before the date in question would have no opinion as to what defendant's mental state was on that later date. As a result, barring Dr. Grewal's testimony was not an abuse of discretion.

¶ 91 To be clear, this court is not holding that in order to be admissible, a defense witness must testify that, due to mental illness or disease, defendant lacked the substantial capacity to appreciate the criminality of his conduct. In fact, we recognize that this court adopted the opposite holding in *People v. Dwight*, 368 Ill. App. 3d 873, 880 (2006), a case relied upon by defendant here. However, the procedural scenario presented in this case differs dramatically from that in *Dwight*, and we find it pertinent to point out the distinction. In *Dwight*, the defendant argued that he was denied a fair trial where the court refused his request for a jury instruction on insanity. *Id.* at 878. In that case, the State made a pretrial motion to exclude the testimony of a psychiatrist who had examined the defendant because he could not opine whether defendant was insane at the time of the offense. *Id.* at 876. The trial court allowed the doctor to testify, but reserved its ruling on the insanity jury instruction until after trial. *Id.* After trial, the court refused to give an insanity instruction based on its finding that after hearing the evidence, no reasonable person could have found the defendant was insane at the time of the offense, and the jury returned a verdict of guilty. *Id*. at 878. On appeal, this court determined that there was adequate evidence to place the issue of defendant's sanity before the jury. *Id.* at 881. The court rejected the State's contention that defendant did not meet his burden of presenting sufficient evidence for insanity instructions because "no witness testified that at the time of the offense defendant lacked substantial capacity to appreciate the criminality of his conduct." *Id.* at 880. The court noted that no medical witness gave the opinion that the defendant was insane at the relevant time, but each medical witness ascribed a mental illness to defendant. *Id.* at 881. However, the court explained, "The jury was free to accept it or reject it, but it had to be properly instructed." *Id.* The court ultimately held that failure to instruct was reversible error that required a new trial. *Id.*

¶ 92 The case at bar differs dramatically from *Dwight* because, here, the trial court provided the jury with an instruction regarding the insanity defense. Defendant has not raised any argument regarding the propriety of the jury instruction, and thus, no issue exists here that is comparable to the issue in *Dwight.* See *id*. ("The issue we must determine is whether a reasonable jury, hearing the testimony presented by the defense witnesses, could find by clear and convincing evidence that the defendant, due to his mental illness, lacked substantial capacity to appreciate the criminality of his conduct").

¶ 93 Further, defendant primarily relies on two cases, *People v. Fields*, 170 Ill. App. 3d 1 (1988), and *People v. Vanda*, 111 Ill. App. 3d 551 (1982), to support his contention that testimony regarding defendant's mental health history should not have been barred. Specifically, defendant asserts that *Fields* and *Vanda* support the proposition that practically every event in a defendant's life is relevant when the insanity defense is raised. Defendant cites to *Fields* and *Vanda* primarily for the proposition that " '[t]o determine insanity, you cannot take an isolated cross section of a single series of acts and myopically examine it within the narrow confines of the date set forth in a formal charge. In order to make a proper determination, there must be more than a cross section; we must examine the person, his history, his relationship with the victim, prior mental illnesses and other intervening factors or causation.' " *Vanda*, 111 Ill. App. 3d at 556 (quoting *People v. Haun*, 71 Ill. App. 2d 262, 268 (1966)); see also *Fields*, 170 Ill. App. 3d at 14 (citing *Vanda*, 111 Ill. App. 3d at 556 (quoting *Haun*, 71 Ill. App. 2d at 268.)) Interestingly, neither decision quotes or cites to the insanity statute that was controlling at the time. However, it is important to clarify the distinction between the language of the statute then and now. At the time *Vanda* and *Fields* were decided, the insanity statute stated, "A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease

or mental defect, he lacks substantial capacity either to appreciate the criminality of his conduct *or to conform his conduct to the requirements of law*." (Emphasis added.) 720 ILCS 5/6-2(a) (West 1994); Ill. Rev. Stat. 1983, ch. 38, ¶ 6-2. The italicized language has not been included in the insanity statute since 1995, when Public Act 89-404, § 15 was enacted.

¶ 94 The State, citing *People v. Hulitt,* 361 Ill. App. 3d 634 (2005), contends that defendant is attempting to present the doctrine of diminished capacity as a defense, but the doctrine is no longer recognized in Illinois. The State points out that *Vanda* and *Fields* were decided before the statute was changed to no longer recognize the defense of diminished capacity, or whether a defendant was able to conform his conduct to the requirements of law. In *Hulitt,* the trial court granted the State's motion *in limine* barring testimony from a psychologist as to the defendant's mental capacity. *Id.* at 636. The defendant claimed she did not intend to raise an insanity defense, but instead wanted the psychologist to testify that she suffered from postpartum depression and could not have intentionally or knowingly killed her daughter. *Id.* The trial court found that the defendant was attempting to resurrect a diminished capacity defense, which was struck by the legislature in 1995. *Id.* On appeal, the defendant argued that she was not attempting to resurrect the former definition of insanity or attempting to claim diminished capacity, instead, she was attempting to show that she did not have the requisite intent to commit first degree murder. *Id.* at 637. On appeal, this court found that the doctor's testimony that defendant sought to introduce "sound[ed] more like a statement of diminished capacity than of recklessness." *Id.* at 640. The court held that because diminished capacity was not a defense available to a defendant in Illinois, the trial court did not abuse its discretion in barring that testimony. *Id.* at 641.

¶ 95 Defendant argues that *Hulitt* is inapplicable because defendant has sought outright acquittal based on his insanity, not a mitigation of charges based on his mental illness. We find this contention unconvincing, where, as here, none of the witnesses that defendant now argues were improperly barred were able to testify as to his mental state at the time of the crimes. Therefore, their testimony regarding defendant's history of mental illness was not relevant to the ultimate issue of the case. As suggested by the State, the proffered evidence defendant sought to introduce from Dr. Hanlon, Brickman, Rauen, and Dr. Grewal appeared to be offered to support the proposition that defendant's capacity was likely diminished at the time of the crimes due to his history of mental illness. However, as stated in *Hulitt*, diminished capacity is not a recognized defense in Illinois. *Id.* at 641. We agree with the trial court that defendant's entire mental health history is not relevant to the question of his mental state on a specific date, at a specific time. As such, the court's determination that such a broad history was irrelevant was not an abuse of discretion.

¶ 96 Defendant also relies on *People v. Weeks*, 2011 IL App (1st) 100395, and *People v. Houseworth*, 388 Ill. App. 3d 37 (2008), to support his assertion that defendant's complete mental health history should have been admitted. Defendant argues *Weeks* and *Houseworth* apply here because the experts in those cases were allowed to testify regarding, *inter alia*, the defendants' mental health history, suicide attempts, and medications. The State's brief is silent on these cases. Nonetheless, we find they are inapplicable to the scenario before us.

¶ 97 In *Weeks*, the relevant issue was whether the jury's finding of guilty but mentally ill was against the manifest weight of the evidence. *Weeks*, 2011 IL App (1st) 100395, ¶ 16. On appeal, the defendant argued that he had proven by clear and convincing evidence that he could not appreciate the criminality of his conduct, and thus, should have been found not guilty by reason

of insanity. *Id.* ¶ 19. This court affirmed the lower court, finding that the defendant was essentially asking it to reweigh the evidence, which consisted of expert testimony from both the defense and the State. *Id.* ¶ 21. Additionally, the defendant in *Houseworth*, like the defendant in *Weeks*, argued that the trial court's finding that he was not insane at the time of the crime was against the manifest weight of the evidence. *Houseworth*, 388 Ill. App. 3d at 50. On appeal, this court noted that the central issue at trial was the conflicting expert testimony, and affirmed the trial court's decision because the trier of fact was " 'free to accept one expert's testimony over another's' and decide the 'weight to accord the experts' respective testimony.' " *Id.* at 52 (quoting *People v. Cundiff*, 322 Ill. App. 3d 426, 433 (2001)).

¶ 98 We find this case is clearly distinguishable where there was no conflicting expert testimony, and where defendant did not even seek to qualify any of the four proffered witnesses at issue as experts. As previously mentioned, whether the defense sought to qualify Dr. Hanlon as an expert is not clear where defense counsel affirmatively stated that "[Dr. Hanlon's] testimony would not be introduced as expert testimony," but claims on appeal that was only in the context of diminished capacity. However, even if Dr. Hanlon's proposed opinion that defendant's mental illness "influenced" his conduct on April 17, 2009, was sought to be introduced as an expert opinion, we have already found that Dr. Hanlon's opinion was properly excluded where it would not assist the trier of fact in determining the ultimate issue. As a result, the scenario before us is unlike that of *Weeks* and *Houseworth*, and thus, we find those cases inapplicable.

¶ 99 2. Denial of Trial Continuance

¶ 100 Defendant next contends that the trial court erred by denying a continuance to permit the defense to call Dr. Mirella Susnjar, who was the first psychiatrist who saw defendant after the

crimes, and who diagnosed him with rule-out psychosis, and rule-out personality disorder. The State responds that the court's decision was proper where the defense brought the motion to continue one week before the trial date that had been agreed to by the parties in a case that was pending for over five years. "The decision whether to grant or deny a request for a continuance is committed to the sound discretion of the trial court." *Weeks*, 2011 IL App (1st) 100395, ¶ 30. "Abuse-of-discretion review is 'the most deferential standard of review available with the exception of no review at all.' " *Id.*

¶ 101 In *People v. Walker*, 232 Ill. 2d 113, 125-26 (2009), our supreme court expressed the appropriate analysis for this scenario as follows:

> "Whether there has been an abuse of discretion necessarily depends upon the facts and circumstances in each case [citations], and '[t]here is no mechanical test * * * for determining the point at which the denial of a continuance in order to accelerate the judicial proceedings violates the substantive right of the accused to properly defend.' [Citation.] Factors a court may consider in determining whether to grant a continuance request by a defendant in a criminal case include the movant's diligence, the defendant's right to a speedy, fair and impartial trial and the interests of justice. [Citations.] Other relevant factors include whether counsel for defendant was unable to prepare for trial because he or she had been held to trial in another cause [citation], * * * the complexity of the matter [citation], the seriousness of the charges [citation], as well as docket management, judicial economy and inconvenience to the parties and witnesses [citation]."

¶ 102 Here, defendant first asserted the defense of insanity on March 11, 2013, in his supplemental answer. On April 16, 2014, defendant filed his second supplemental answer,

stating in relevant part that he may call as witnesses "CCHS Cermak Hospital Staff to be identified." On May 19, 2014, the State informed the court that the defense still had not provided the names of the witnesses from Cermak Hospital that it intended to call. As a result, the court ordered the defense to provide the State with names of its Cermak witnesses within 24 hours. The following day, May 20, 2014, defendant filed a motion to continue trial, arguing that Dr. Susnjar would be out of the country and was unable to testify until after June 16, 2014. At the hearing on the motion to continue, the defense argued that Dr. Susnjar was a "necessary material witness" because she was the "first doctor[4]" that evaluated defendant when he was received at the psych unit of Cermak Hospital after his arrest. Defense counsel also informed the court that, when she first spoke with Dr. Susnjar, the doctor informed her that she was unavailable on May 27, 2014, but defense counsel "did not understand [Dr. Susnjar] would not be available the week after that as well." The trial court denied defendant's motion to continue trial, recognizing that the case had been active for five years, and specifically stating:

> "We litigated extensive motions with a public defender who [has] subsequently retired. This [c]ourt waited patiently for a new public defender to be appointed. This [c]ourt waited even more patiently *** to allow you and your co-counsels to get up to speed.
>
> I think this [c]ourt has gone above and beyond in terms of extending you the courtesy and the time to prepare this case. This case was originally set for May 6th for jury [trial]. This [c]ourt indulge[d] your request to make it May 27th so you knew as -- for some period of time that this was going to trial.

[4] As a brief aside, we note that defendant clarified in his brief that, in fact, Dr. Susnjar was the first psychiatrist to see defendant, as Dr. Gordon and Dr. Patel had evaluated defendant prior to Dr. Susjnar.

> You requested and agreed to the date of May 27th. In your motion you indicated that Dr. Razi [*sic*] is one of the psychiatrists who examined the defendant. Based on your representations during the motion [*in limine*], it appears that he was examined by multiple personnel at Cermak. So its appears to this [c]ourt that since he is only one of the psychiatrists that's out in Cermak, that most likely there is another psychiatrist that would be available."

¶ 103 In this case, the trial court's decision primarily relied on the fact that this case had been pending for five years, and that the parties agreed to the trial date after the defense requested the original date be moved. Additionally, the court considered that defendant would have other witnesses available to him to provide similar testimony. At the hearing, defense counsel did not provide any reason as to why she had waited until one week prior to trial to seek a continuance for a witness whom she admitted she knew was not available on the date trial was to begin. We find the trial court properly considered the *Walker* factors in making its decision to deny the continuance, even if the court did not expressly reference that case or the factors by name. It is apparent from the court's decision that it considered the diligence, or lack thereof, by defense counsel in preparing for trial, namely, the defense's failure to ensure that its witnesses were available on the date to which it had agreed. Additionally, the court implied that judicial economy would not be served by continuing to prolong a case that had already been pending for five years. Affording the trial court the requisite level of deference, we find that its decision to deny defendant's request was not an abuse of discretion. See *Weeks*, 2011 IL App (1st) 100395, ¶ 30.

¶ 104 3. Testimony of Dr. Morjal and Dr. Mills

¶ 105 Defendant next argues that the trial court erred by restricting the testimony of Dr. Morjal and Dr. Mills by barring reference to defendant's psychiatric history, including hospitalizations, previous diagnoses, and medications. The State responds that the trial court had already determined that such evidence was inadmissible, and thus, its decision was proper. We reiterate that the decision of whether to admit evidence is within the sound discretion of the trial court and we will not reverse that determination without a showing of an abuse of that discretion, which occurs when "no reasonable person would take the view adopted by the court," or when such a decision is arbitrary, fanciful or unreasonable. *Burgess*, 2015 IL App (1st) 130657, ¶ 134.

¶ 106 In support of his proposition, defendant relies on *People v. Anderson*, 113 Ill. 2d 1, 10-11 (1986), wherein the court held, "To prevent the expert from referring to the contents of materials upon which he relied in arriving at his conclusion places an unreal stricture on him and compels him to be not only less than frank with the jury but also *** to appear to bas his diagnosis upon reasons which are flimsy and inconclusive when in fact they may not be." (Internal quotation marks omitted.) The State points out that *Anderson* is inapplicable where, as here, defendant did not seek to qualify Dr. Morjal or Dr. Mills as experts. We agree with the State. Our review of the record indicates that defendant never sought to qualify either Dr. Morjal or Dr. Mills as experts, and thus, *Anderson* does not support defendant's contentions on this point.

¶ 107 Defendant next argues that the case of *People v. Taylor*, 153 Ill. App. 3d 710 (1987), stands for the proposition that a treating physician, such as Dr. Mills and Dr. Morjal, may rely on the same types of information as an expert in forming a diagnosis, and may testify to that information in forming their diagnostic opinion. In *Taylor*, the defendant was convicted of criminal sexual assault of a minor and criminal sexual abuse of a minor. *Id.* at 712. On appeal,

defendant argued that the trial court erred when it allowed the doctor who treated the victim to testify that the victim made a statement to the doctor that the defendant had sexually assaulted her. *Id.* at 719. The court acknowledged that the doctor's testimony "afforded some corroboration of [the victim's] testimony that defendant had sexually assaulted her, and stated, "To determine the extent of that corroboration, we must decide the extent to which [the treating doctor's] testimony repeating [the victim's] statement to [the doctor] describing the alleged attack was admissible." *Id.* In reaching its decision, the court noted that it was unaware of any criminal case "where a physician has been permitted, under the physician-patient exception to the hearsay rule, to repeat a statement made by the patient identifying the assailant." *Id.* at 721. The court ultimately found that the admission of the victim's statement to the treating doctor was error which had a strong impact on its decision to grant a new trial. *Id.*

¶ 108 As clearly shown by the substantive issues addressed there, the holding in *Taylor* does not support defendant's contention that treating physicians and experts are afforded the same latitude in testifying regarding the bases for their diagnoses or opinions. As such, we decline to find that *Taylor* provides for the admission of the type of testimony that defendant claims the trial court erred in barring. Further, we have already found that it was not an abuse of discretion for the trial court to bar testimony that it found irrelevant, too remote, or speculative. See *Enis*, 139 Ill. 2d at 282 ("A trial court may reject offered evidence on the grounds of irrelevancy if it has little probative value due to its remoteness, uncertainty, or speculative nature"). Had Dr. Morjal or Dr. Mills been qualified as expert witnesses, our decision might have been different based on *Anderson*; however, *Taylor* simply does not support the proposition that defendant suggests.

¶ 109 Relying on *Chapman v. California*, 386 U.S. 18 (1967), defendant also argues that barring the defense from presenting evidence to support the insanity defense was not "harmless beyond a reasonable doubt." The State, conversely, argues that our review should be for mere harmlessness because the issues here are evidentiary, rather than constitutional. Our supreme court has recognized that "there is a somewhat higher bar for constitutional error than other trial error to be deemed harmless." *In re E.H.*, 224 Ill. 2d 172, 180 (2006). However, we agree with the State, as our foregoing analysis was conducted based on the trial court's evidentiary rulings. An evidentiary error is harmless "where there is no reasonable probability that the jury would have acquitted the defendant absent the error." See *id* (quoting *People v. Nevitt*, 135 Ill.2d 423, 447 (1990)).

¶ 110 To be clear, we have not found that the trial court's decisions regarding the limitation of evidence that defendant could present in support of his insanity defense was error. However, we find it imperative to explain that, even assuming *arguendo* that the trial court's rulings amounted to error, we nonetheless find that any such error was harmless where there was no reasonability probability of defendant's acquittal based on his insanity defense.

¶ 111 Here, although defendant was able to present a complete defense, the evidence he presented did not satisfy his burden of proving his insanity by clear and convincing evidence. 720 ILCS 5/6-2(e) (West 2008). Simply put, no one in this case testified that defendant was insane at the time of the stabbings. Further, none of the proffered witnesses would have testified that he was insane at the time of the stabbings. A trial, defendant presented testimony from two doctors, who both testified that defendant had mental diseases or defects. Defendant also presented testimony from Officer Vivona, who photographed defendant's injuries after the stabbings, and testified, similarly to all the other witnesses in this case who encountered

defendant shortly before or after the stabbings, that defendant appeared calm and answered all his questions appropriately. Defendant also presented the testimony of nurse Yedor, who treated Shelly at the emergency room, and who testified that Shelly stated that her "daughter's fiancé went crazy and just started stabbing everyone." Defendant, himself, testified regarding his mental state during the stabbings. Additionally, Amanda and Shelly testified about defendant's behavior during the stabbings, and the defense was able to cross-examine them. Defendant presented some testimony regarding his insanity defense and the jury was free to accept or reject it. Merely because they found defendant did not meet his burden, and rejected his defense does not signify that defendant was not able to adequately present his defense.

¶ 112 Further, it is clear that the evidence at trial showed that defendant appreciated the criminality of his conduct, and thus, no reasonable probability existed that the jury would have acquitted defendant. Officer Braun, who was the last person to observe defendant's behavior prior to the murders (exclusive of those present in the Engelhardts' house during the stabbings), testified that when he spoke with defendant and informed him that there was a warrant for his arrest for a minor traffic violation, defendant seemed to understand everything he was told. Officer Braun also stated that defendant did not appear to be hearing any voices or experiencing any hallucinations. Defendant answered all of the officer's questions appropriately and never told Officer Braun that he was hearing loud voices or sirens. Further, Officer Braun stated that he would have called the paramedics to seek an evaluation for defendant if he believed defendant was suffering from a mental illness but he did not because defendant was "acting as a normal person." These observations were made extremely close in time to when the stabbings occurred, and indicate that defendant would have been able to appreciate the criminality of his conduct.

¶ 113 Further, Amanda testified that at some point during the events in question, her aunt Sandy came into the room, and sat down in a chair. Amanda stated that defendant told Sandy that she was not going to get hurt "[b]ecause she was innocent." This indicates that defendant was able to discern right from wrong because he opted not to harm Sandy based on her being "innocent." Additionally, defendant did not stab Amanda or their daughter. Because defendant was able to appreciate his conduct enough to choose his victims also indicates that he was not insane. Further, there is evidence that the phones in the house were unplugged. Amanda testified that she had tried to use the house phone but there was no dial tone. Shelly testified that their phones were "always operating." Additionally, Sergeant Cawley testified that she observed that neither the phone in the kitchen, nor the phone in the family room was plugged into the wall. At some point, defendant told Amanda that he would not let her call anyone until he died, which indicated defendant's knowledge that there would be consequences to his actions, suggesting an appreciation for the criminality of his conduct. Amanda testified that defendant went to the laundry room, grabbed a bottle of bleach, and poured it on the kitchen floor where there was blood, which also tends to show that he intended to clean up evidence of his crimes and appreciated the criminality of his conduct. See *Dwight*, 368 Ill. App. 3d at 880 (stating that in the determination of a defendant's sanity, of particular relevance are factors including defendant's plan for the crime and methods to prevent detection).

¶ 114 Paramedic Kurzawinski, the first to treat defendant, testified that when he spoke with defendant while still at the Engelhardts' house, defendant answered all of his questions and did not appear to have any difficulty understanding what was being said to him. Paramedic Stoub also testified that defendant appeared oriented, and they had a clear conversation, in which defendant responded to his questions with appropriate answers. Additionally, Dr. Gordon, who

treated defendant upon his arrival at the hospital after the stabbings testified that defendant appeared "alert [and] oriented" and that he knew where he was and why he was there. Dr. Gordon also stated that defendant was able to answer questions, and his answers were "appropriate." Dr. Gordon also testified that defendant did not appear to be suffering a break from reality. Because Dr. Gordon observed defendant very close in time to the stabbings, his testimony provided the jury with evidence that defendant was likely able to appreciate the criminality of his actions, where he was not suffering a break from reality and was able to appropriately answer questions shortly after the stabbings. Similarly, Dr. Patel, who attempted to treat defendant the night of April 17, 2009, testified that defendant did not appear to be hallucinating, hearing voices, noises, or sirens, and did not appear to be suffering a break from reality.

¶ 115 As to defendant's mental health history, we have already determined that the jury heard adequate evidence that defendant, in fact, was diagnosed with and suffered from various mental diseases or defects through the testimony of Dr. Morjal and Dr. Mills. We also find that the jury heard ample evidence of defendant's abnormal behavior near the times of the stabbings, where Amanda and defendant both testified as to defendant's delusions due to her alleged cheating, defendant hearing voices from upstairs, and defendant hearing voices which he referred to as "angels and demons" or "good and evil." Defendant also testified that he thought Amanda's ring was bugged, and that he thought Amanda sometimes spoke to him through her mind. The jury also heard that defendant attempted suicide in 2008. Defendant makes much of the fact that the jury did not hear the details of his other previous suicide attempts; however, the jury heard that, on the day before the stabbings, defendant inhaled most of a propane tank and cut his leg with a box cutter. Defendant testified that he did this because he was depressed and was attempting

suicide. Thus, it is clear the jury heard unequivocal evidence that defendant was suicidal the day prior to the stabbings, and yet, the jury was still not convinced that defendant lacked appreciation for the criminality of his conduct at the time of the stabbings. It follows that it is unlikely that a suicide attempt further in the past would have impacted the jury's decision. We also find that there was no reasonable probability of acquittal when defendant testified that he sometimes heard "good and evil" voices, but denied that any voice commanded him to tie up his victims or commit any of the stabbings. Although defendant stated that he heard loud noises or sirens during the commission of the offenses, he admitted that he did not tell anyone, including the doctors who treated him after the stabbings, about hearing sirens or voices, which casts doubt on defendant's credibility regarding whether he, in fact, heard loud noises, sirens, or voices at the time of the stabbings. In its reply brief, the defense suggests that defendant told Dr. Morjal about hearing voices. Defendant did tell Dr. Morjal that he began hearing voices three months prior to the stabbings, and that he had most recently heard them on the day he was examined by Dr. Morjal—April 19, 2009. Notably, defendant did not specifically tell Dr. Morjal that he heard the voices on the date of the stabbings.

¶ 116 Defendant suggests that had the jury heard about defendant's lengthy mental health history, the jury "could have" concluded that he was insane at the time of the offense. We disagree with this contention given the overwhelming aforementioned evidence that showed defendant's ability to appreciate the criminality of his conduct. We do not find that even if defendant's mental health history, details of his previous suicide attempts, or his previous medications was presented to the jury that the outcome would have changed. We also reject defendant's contention because the appropriate test is not whether a jury *could* have concluded that he was insane, but whether there was a *reasonable probability* as to that conclusion.

(Emphasis added.) See *E.H.*, 224 Ill. 2d at 180. We find there was not, and thus, we affirm the trial court's evidentiary rulings.

¶ 117 B. Questions to Potential Jurors

¶ 118 Defendant argues that when the trial court prohibited questioning during *voir dire* regarding the potential jurors' feelings or viewpoints regarding the insanity defense, it denied defendant a fair trial.

¶ 119 "*Voir dire* serves the dual purpose of enabling the trial court to select jurors who are free from bias or prejudice and ensuring that attorneys have an informed and intelligent basis on which to exercise their preemptory challenges." *People v. Gregg*, 315 Ill. App. 3d 59, 65 (2000). The right to a jury trial guarantees a defendant a fair trial by impartial jurors. *Id.* Limiting *voir dire* may constitute reversible error where the limitation denies a party a fair opportunity to ask about an area of potential bias or prejudice. *Id.* "The primary responsibility of conducting *voir dire* examination lies with the trial court, and the manner and scope of such examination rest within the discretion of the trial court." *Id.*

¶ 120 Specifically, Illinois Supreme Court Rule 431(a), which governs *voir dire* in criminal cases states:

> "The court shall conduct voir dire examination of prospective jurors by putting to them questions it thinks appropriate, touching upon their qualifications to serve as jurors in the case at trial. The court may permit the parties to submit additional questions to it for further inquiry if it thinks they are appropriate and shall permit the parties to supplement the examination by such direct inquiry as the court deems proper for a reasonable period of time depending upon the length of examination by the court, the complexity of the case, and the nature of the charges. Questions shall not directly or

> indirectly concern matters of law or instructions. The court shall acquaint prospective jurors with the general duties and responsibilities of jurors." Ill. S. Ct. R. 431(a) (eff. Jul. 1, 2012).

¶ 121 The *Gregg* court summarized a party's right to examine jurors in a case where a defendant pleads an insanity defense as follows:

> "When insanity is an issue, the parties have a right to examine jurors concerning their attitudes on an insanity defense. [Citation.] A defendant's sixth and fourteenth amendment rights to an impartial jury are diminished when jurors are prejudiced against an appropriate verdict of not guilty by reason of insanity. [Citation.] No precise technical test or formula exists for determining whether a prospective juror is impartial. [Citation.] On review, an abuse of discretion will be found only when the record reveals that the selection of an impartial jury was thwarted. [Citation.] The standard for evaluating the court's exercise of discretion is whether the questions and the procedures used during *voir dire* to gauge juror competency created a reasonable assurance that any prejudice or bias present would be discovered. [Citation.]" *Gregg*, 315 Ill. App. 3d at 65-66.

¶ 122 Here, the defense requested that it be allowed to inform the jury that "[t]he defense of insanity may be presented in this case" and "a defendant is not criminally responsible for his conduct if as a result of a mental disease or defect, he lacks a substantial capacity to appreciate the criminality of his conduct." The defense sought to follow this information with this question: "Do you have any feelings or viewpoints concerning the defense of insanity in a criminal case?" The defense further stated that it was "also asking the [c]ourt to allow either ourselves or the [c]ourt to ask of the prospective jurors: Do you have any feelings or viewpoints concerning the

defense of insanity as a follow-up question to the statement of law." We examine the two parts of defendant's request in turn.

¶ 123 Regarding the first part of defendant's request, which was basically a recitation of the insanity statute, the court denied the defense's request, stating that it "does not instruct the jury as to the state of the law during [*voir dire*]." We find this ruling by the trial court to be proper. Rule 431(a), in relevant part, states: "Questions shall not directly or indirectly concern matters of law or instructions." Ill. S. Ct. R. 431(a) (eff. Jul. 1, 2012). Therefore, it is clear that a statement of the law regarding the insanity defense that specifically includes language from the relevant statute is not appropriate during *voir dire*, and is a matter that should be the subject of a jury instruction, where appropriate, as it was here.

¶ 124 We next turn to the follow-up questions that the defense sought to ask: "Dou you have any feelings or viewpoints concerning the insanity defense in a criminal case?" and "Do you have any feelings or viewpoints concerning the defense of insanity?" These questions are essentially the same, with the only difference being the words "in a criminal case." However, the words "in a criminal case" do not add any substance to the questions given that the defense of insanity is only available in a criminal case, and the case for which the potential jurors had been summoned was a criminal case. Having already determined that the first part of the first question, *i.e.* instructing potential jurors as to the insanity statute, was improper, and because the two proposed follow-up questions are nearly identical, we treat the two questions as one. Thus, we must decide whether the trial court abused its discretion where it refused to allow the defense to ask the potential jurors if they had any feelings or viewpoints concerning the defense of insanity.

¶ 125 Here, the trial court found that the defendant's proposed question was inappropriate because it related to the potential jurors' feelings, which was not the issue for the court. Instead, the trial court stated that, "The issue is for both the defendant and [the] State *** to find a jury that will be fair and [im]partial to both sides, that will listen to the evidence, and that will render a verdict based on the evidence that is presented before them."

¶ 126 Defendant primarily relies on *People v. Stack*, 112 Ill. 2d 301 (1986), as support for its argument that the trial court erred. In *Stack*, the defendant sought to ask potential jurors the following four questions: (1) Have you or anyone close to you had any experience with a psychiatrist or psychologist?; (2) Do you agree with the concept that a person should not be held responsible for his acts if he is not capable of conforming his conduct to the requirements of the law?; (3) Can you find someone not guilty by reason of insanity?; and (4) Do you have any feeling or viewpoint concerning the defense of insanity in criminal case? If so, what? *Id.* at 310. The trial court only allowed the first question to be asked because it found the other questions "argumentative and presupposed knowledge of how the insanity defense is legally defined in Illinois." *Id.* at 310-11. The appellate court, in reversing the circuit court, determined that refusal to ask the defendant's tendered insanity questions was an abuse of discretion. *Id.* at 311. Our supreme court then held that the trial court's refusal to ask the second and third questions was proper, finding those two questions were "vague and improperly phrased." *Id.* Our supreme court determined that the fourth question, however, was proper and should have been put to the jurors. *Id.* The court recognized that it had previously "described insanity as 'a defense which is known to be subject to bias or prejudice.' " *Id.* at 313 (quoting *People v. Bowel*, 111 Ill. 2d 58, 65 (1986)). The court held, "A defendant's right to an impartial jury is not, therefore, protected where the sole inquiry into whether jurors will abide by the law allowing that controversial

defense is the far broader and all-embracing question which the State contends was propounded in this case, namely, whether the jurors would follow the court's instruction on the law." *Id.* The court also echoed the concept that, "parties have the right to have jurors examined concerning their attitudes toward the insanity defense when such is involved in a case." *Id.*

¶ 127 The State responds that *Stack* is inapplicable, because in that case, unlike here, the trial court prevented the defense from asking any questions regarding the defense of insanity. Here, the defense was permitted to ask the first panel of potential jurors, the following question: "In this case the [d]efense may be raising a defense of insanity. Is there anything about the fact that that would be a defense in this case that would cause you to be unfair in your evaluation of the facts in this case? Any body?" The transcript reflects that all[5] the potential jurors shook their heads, no. During questioning of the second panel of potential jurors, the defense asked, "You may hear evidence on the issue of insanity. Can anybody -- would there be anyone who could not listen to evidence on the issue of insanity just like any other evidence that would be presented in the case?" One potential juror responded, "It would be hard for me to." Our review of the record indicates that this juror was subsequently excused for cause by the court because he had indicated that he had a relative who was murdered in the last couple of years and that he would have a great deal of difficulty listening to a murder trial. Twelve jurors were chosen from these first two panels. The court then impaneled a third group from which to choose alternates. The defense asked the third panel, "Would you have any feelings or viewpoints about the insanity defense in a criminal case?" The State objected and the court sustained the objection. The defense then asked "Would you consider the evidence as any other evidence in this case if

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[5] There was one juror who did not shake her head no in response to this question by defense counsel. However, our review of the record indicates that this particular juror did respond to many of the questions posed by the court the parties. This potential juror was subsequently excused by the court because English was not her first language, and the court observed that she did not appear to understand many of the questions.

an insanity defense is presented?" The court then stated that the defense might want to rephrase that, and asked the jurors, "if the [d]efense does present evidence of insanity, would you consider that testimony as evidence as you would any other testimony or evidence in the trial?" The court then stated that all jurors except one was nodding in the affirmative. The juror who did not nod was not chosen as an alternate.

¶ 128 Based on the foregoing, it is clear to this court that the circumstances of *voir dire* in this case do not mirror that of *Stack*. *Stack* acknowledged that the parties have a right to have their "attitudes toward the insanity defense" examined. *Id.* at 313. *Stack* did not state that a defendant who asserts the insanity defense has the right to ask the jurors a question containing language regarding their "feelings and viewpoints." Defendant argues that the questions it was allowed to ask did not permit a sufficient probe into potential bias. We disagree. The defense asked the first panel if there was "anything" about the defense of insanity that would cause them to be unfair in their evaluation of the case. All of the prospective jurors shook their heads, no. The defense's question was broad enough that it provided an opportunity for any juror who was harboring biased or unfair feelings to respond in such a way. Defense counsel opted to rephrase this question during the second panel, and instead asked if there was anyone who could not listen to evidence of defendant's insanity as if it were any other evidence in the case. This question also allowed an opportunity for jurors to express any attitudes they had toward the insanity defense that would influence their ability to listen to all the evidence in the same, fair manner.

¶ 129 Similarly, because these questions reasonably afforded potential jurors an opportunity to express any attitudes of bias or prejudice, the parties were resultantly given an adequate basis to form their preemptory challenges. See *People v. Strain*, 194 Ill. 2d 467, 481 (2000) (holding that the trial court's refusal to probe for bias denied the defendant "an informed and intelligent basis

on which to assert challenges for cause or to exercise preemptory challenges"). Merely because the words "feelings and viewpoints" were excluded by the trial court does not mean that the questions that were asked did not provide an opportunity for the jurors to bring to light any internal issues, or attitudes, they may have had with the "controversial" defense of insanity. Additionally, this case is unlike *Stack* because the court there expressly stated that a defendant's right to an impartial jury is not protected where the *sole inquiry* into whether the jurors will abide by the law came in the form of a general question regarding whether jurors could follow the law in the case. (Emphasis added.) *Id.* Here, the defense was allowed to specifically address the insanity defense by asking the jurors the aforementioned questions. The court did not completely prohibit the defense from asking about the insanity defense, as the trial court did in *Stack*. Additionally, the questions that were asked assured that any prejudice or bias would be discovered. See *Gregg*, 315 Ill. App. 3d at 65. As such, we do not find that the trial court's decision on this issue was error.

¶ 130 C. State's Closing Argument

¶ 131 Defendant's final contention on appeal is that the State committed pervasive prosecutorial misconduct during its closing argument by making repeated appeals to the jurors' emotions and making comments designed to undermine defendant's insanity defense. Specifically, defendant takes issue with the following portions of the State's closing argument:

> "[A] loving family, the Engelhardts, with a grandmother living in the home with them, Marlene Gacek, allowed a man into their home by the name of D'Andre Howard to share their hopes, their dreams, and their future. And he repaid them by slaughtering them. He carved them up as if they were pieces of meat.
>
> ***

He not only murdered three people, tried to murder a fourth, but he also murdered a dream, a future. He murdered the future and the dreams of Alan Engelhardt, a loving father, who had dreams for his daughter. He had dreams for his daughter Laura, who was about to go to college, graduate high school, and go to the prom, an intelligent young lady, from all of the indications from what we've heard today. A grandmother who would never be able to attend the wedding of a daughter in the future. So he not only killed people; he killed dreams. He not only killed dreams, he killed the future.

***

And what about Shelly Engelhardt? What are going to be the memories she has to live with for the rest of her life? Holding onto the feet of her dead husband as an ambulance driver had to take her away to a hospital for nine days of near death. A daughter whom she loved lying next to her dying, and later died.

***

[Defendant] claims he wasn't angry. Well, perish the thought of what happens when D'Andre Howard is angry? What does he do then, go to other houses and kill other people?

***

What would have happened to Laura, do you think, if the paramedics had come when they first said, 'please call 911?' Do you think she might be alive today? Answer that to yourselves when you go back there to deliberate.

***

> And Shelly, [defendant] says, was chanting. You know what Shelly was saying, 'please God, don't let him kill me and my family.' She was praying for her life, and she was begging for her life, and she was begging for the life of her children.
>
> ***
>
> You know folks, as I said before, the only voices that were heard by this guy were the voices of those poor souls begging for their lives, the dreams vanishing from their homes, their lives ended, Shelly Engelhardt left with the memories that I've said to you before are unimaginable."

The defense also took issue with the following portions of the State's rebuttal argument:

> "They give you the 'he must have been crazy, he must have been crazy to do that' argument. Right? I mean, this family was good to him. He loved them. You know, why in the world would he ever kill them? No sane person would ever do this. And of course, that's right, because as we all know no one ever kills someone they love. Just like no one's ever jealous enough to think that something happened that didn't, to think that their girlfriend or boyfriend are engaging in an affair when they're not. Never happens.
>
> They talk about the fact that oh, he was normal up to that point. Do you know what people say when a sane person commits a crime? They say things like Shelly and Amanda said, like Amanda said to the grand jury, 'I swear to God, this is not like him. I know him more than most people. I never would have thought him capable of this.' What did Shelly say when he had that knife? 'I was hoping he wasn't serious.' That's what people say when a sane person commits a crime. 'I had no idea he would do this.'

> Do you know what people say when a truly insane person commits a crime? 'Saw this coming. Not surprised at all. Oh, he had been acting so bizarrely, he had been mumbling and he'd been talking to the air. He had been talking about how the CIA wanted to kill him.' That's what people say when a truly insane person commits a crime.
>
> ***
>
> [Defendant] was able to get an apartment, and his name was on the lease. Do you really think a landlord is going to let him sign a lease if the landlord thought he was so mentally unstable or actively psychotic?
>
> ***
>
> Do not reward him with a verdict of not guilty by reason of insanity. Force him to accept responsibility for what he did. Do that with verdicts of guilty."

¶ 132 Defendant acknowledges that his trial counsel failed to object to any of these comments during the State's closing except the comment regarding whether a landlord would allow a mentally unstable person to sign a lease. It is well-settled that both a trial objection and a posttrial motion raising the issue are required to preserve alleged errors for appeal that could have been raised during trial. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). As such, all of defendant's issues with the State's closing argument are forfeited, with the exception of the comment regarding a landlord, which we address at the end of this section.

¶ 133 Notwithstanding his forfeiture, defendant argues that we may review the State's allegedly improper comments for plain error, and in the alternative, argues that his trial counsel was ineffective. The plain-error doctrine bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved error "(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. The first analytical step, therefore, is to determine whether there was a clear or obvious error at trial. *Id.* ¶ 49.

¶ 134 "A prosecutor has wide latitude in making a closing argument and is permitted to comment on the evidence and any fair, reasonable inferences it yields. [Citation.] Prosecutors may not argue assumptions or facts not contained in the record. [Citation.] A closing argument must be viewed in its entirety, and the challenged remarks must be viewed in their context. [Citation.] Statements will not be held improper if they were provoked or invited by the defense counsel's argument. [Citation.]" *People v. Glasper*, 234 Ill. 2d 173, 204 (2009). Keeping these rules in mind, we review the comments that defendant alleges were improper.

¶ 135 As a brief aside, we note that there are conflicting decisions regarding the appropriate standard of review when addressing whether statements made by the prosecution during closing argument are so egregious as to warrant a new trial. In *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007), our supreme court stated that *de novo* review applied. Conversely, in *People v. Blue*, 189 Ill. 2d 99, 128 (2000), a previously-decided case that the court cited with approval in *Wheeler*, our supreme court applied an abuse-of-discretion standard. We find it unnecessary to resolve this discrepancy here, where our decision is the same under both standards of review. See *People v. Green*, 2017 IL App (1st) 152513, ¶ 81 (stating that resolving the issue of the appropriate standard of review was unnecessary because outcome would be the same under either standard).

¶ 136 First, defendant contends that the State's initial comments in its closing argument, specifically the comments regarding defendant "slaughtering" and "carv[ing] them up as if they were pieces of meat" were unnecessarily inflammatory and aimed to invoke the jury's sympathy and passions. The State argues that the "slaughter" comments were based on the evidence because defendant threatened Amanda, Shelly, and Laura with the knife, and also stabbed Laura and Alan numerous times, including slashing Alan's neck. "The prosecutor is allowed to comment on the evidence and reasonable inferences from the evidence." *People v. Fountain*, 2016 IL App (1st) 131474, ¶ 82.

¶ 137 Here, Dr. Crowns testified that Alan had a six-inch wound to his neck that would cause a person to bleed to death in minutes because the jugular vein was opened. Additionally, Dr. Crowns testified that Laura had 12 stab wounds and 3 incised wounds, and that Marlene was stabbed in her chest, which caused her to aspirate blood. In light of the extensive, brutal injuries the victims suffered here, we do not find that the State's comments were calculated solely to inflame the jury, but rather accurately reflected defendant's conduct. The wounds in this case were gruesome, and to describe defendant's actions as slaughter was not error.

¶ 138 Next, defendant claims the State's comments regarding the killing of the Engelhardts' dreams and futures was error because these remarks deliberately invoked the jury's sympathy and inflamed their passions. The State argues that it only mentioned the end of the family's future and dreams at one point during a 13-page closing argument, and that it did so because it was related to the State's theory that defendant was part of the family's future because they had accepted him into their family, and thus, he could not have been insane. "Common sense dictates that a victim does not live in a vacuum (citation), and evidence of a victim's family

relations is admissible to the extent necessary to properly present the prosecution's case (citation)." *People v. Cloutier*, 156 Ill. 2d 483, 508 (1993).

¶ 139 During trial, the State elicited testimony from Shelly about the members of the Engelhardt family who were victims in this case. Specifically, Shelly testified that Laura was preparing for graduation and prom, and planned to go to college. Thus, the State's comments regarding the impact of defendant's actions on the Engelhardts' future was based on the evidence. Further, these questions were not objected to by defendant. Compare *People v. Hope*, 116 Ill. 2d 265, 278 (1986) (recognizing that the prejudicial effect of questioning regarding the victim's family was amplified when defense counsel's objections were overruled). Defendant argues that the State, in fact, did dwell on this particular theme of dream-killing, because it actually made up nearly one third of the State's closing argument. We disagree based on our review of the record. The first three paragraphs of the State's closing argument reference this theme, not the first three pages, as defendant suggests. Additionally, we do not find the State's questioning of Shelly or its comments in closing argument regarding her testimony to be error where Shelly, a victim and witness, was not merely testifying about the effects of the stabbings on the victim's family, but instead was testifying regarding the victims themselves, who in this case, happened to all be from the same family. This is not a situation, as was present in *Hope*, where the jury heard evidence regarding the sole victim's family, who were not in any way involved in the crime. *Id.* at 268-69. Here, the State merely asked Shelly general questions regarding other victims of the stabbings. We do not think such a situation is akin to when a prosecutor asks questions regarding a victim's family members, who were not present during the crime, merely to invoke the jury's sympathy. Additionally, we find such questions and

comments to be incidental to the State's case, rather than pervasive throughout. Thus, we find no error.

¶ 140 Defendant also takes issue with the State's comment that Shelly was holding onto Alan's feet as the ambulance driver took her away. Defendant argues that this is a misstatement of the evidence, the only purpose of which was to invoke sympathy for Shelly. First, we do not find that the State's comments on this issue were solely to invoke sympathy. Rather, the State's comments regarding what Shelly's memories would be are generally supported by the testimony in this case, with the exception of her physically holding onto Alan's feet, rather than seeing the feet, as she testified. Additionally, the fact that the State referred to Alan as Shelly's "dead husband" is based on the evidence because Dr. Crowns testified that someone suffering a wound to the jugular, as Alan did, would have been dead within minutes. The State essentially concedes that the "holding on" language was a misstatement of the evidence but calls it an "incidental discrepancy" because Shelly testified that she saw Laura's and Alan's feet on the other side of where she was laying after she regained consciousness after being stabbed. "Absent deliberate misconduct, incidental and uncalculated remarks in opening statement cannot form the basis of reversal (citation), and comments in closing argument must be considered in context of the entire closing argument of both the State and defendant (citation)." *People v. Cloutier*, 156 Ill. 2d 483, 507 (1993). Considering this comment in context, we do not find it rises to the level of error. Although, the State was mistaken on the fact that Shelly testified that she saw Alan's feet, rather than held onto them, this misstatement of the evidence occurred only once and was not a significant portion of the State's closing argument. Additionally, because the State referenced Shelly's "memories" in the preceding sentence, the jury might have inferred that the State was

talking about Shelly "holding onto" her memories of seeing her husband's feet—a memory about which Shelly expressly testified. Thus, no error occurred.

¶ 141 Next, defendant argues that the State's comments regarding what would happen when defendant was angry sought to inflame the jurors' passions. The State contends that this was merely a sarcastic comment that called into question defendant's credibility about his sanity at the time of the stabbings. "The wide latitude extended to prosecutors during their closing remarks has been held to include some degree of both sarcasm and invective to express their points." *People v. Banks*, 237 Ill. 2d 154, 183 (2010).

¶ 142 Here, we find that the State's comment regarding what defendant would do if he was angry was clearly delivered as sarcasm, and was not intended to be taken as a statement of the evidence. Such comments were proper, where defendant repeatedly testified how he was not angry about Amanda's alleged cheating, and was not angry during the commission of the stabbings. Further, after review of the State's entire closing remarks, we find that the State did not overuse sarcasm and merely employed it sparingly. As such, no error occurred.

¶ 143 Next, defendant asserts that the State's comments regarding whether Laura would have survived if someone had been able to call 911 sooner was an emotional appeal to the jury. The State contends that this comment was a reasonable inference drawn from Dr. Crowns's testimony. We reiterate the well-established rule that, "The prosecutor is allowed to comment on the evidence and reasonable inferences from the evidence." *Fountain*, 2016 IL App (1st) 131474, ¶ 82.

¶ 144 Here, Dr. Crowns testified that Laura had received extensive medical treatment prior to her death. He also testified that Alan's wound would have caused him to bleed out in minutes, but did not testify similarly regarding Laura. Additionally, there was testimony from Sergeant

Cawley that the phones in the house were unplugged, even though Shelly testified that they were usually plugged in. Taken together, the jury could have drawn the reasonable inference that Laura might have survived had she received medical attention sooner. The State did not tell the jury that, in fact, Laura would have survived, but rather, asked them to infer what would have happened based on the evidence. Thus, no error occurred.

¶ 145 Defendant also contends that the State's argument that Shelly prayed to God that defendant not kill her and her family, and that she and Laura begged for their lives was improper because it was not based on the evidence. The State argues that this was inferred from the evidence. We agree. Taking into consideration the wide latitude afforded the prosecution (*id.*), we find that such comments were proper where defendant testified that he put a sock in Shelly's mouth because he she pleaded with him to stop what he was doing and he "didn't want to hear the church stuff she was saying at the time." Further, defendant testified that Shelly stated that she was trying to "rebuke demons" from defendant. Additionally, Shelly testified that she had asked defendant to attend church with them and defendant testified that Shelly had given him a prayer to say. Where, as here, there is evidence indicating that religion played an active role in Shelly's life, *i.e.* she had asked defendant to attend her church, gave him a prayer, and spoke of "demons" and "church stuff," a reasonable inference could be drawn that during the stabbings, she prayed that her and her children's lives would be spared. As to the "begging" aspect of the State's comments, there was evidence that Shelly asked defendant to put the knife away and pleaded with him to stop what he was doing. Also, defendant testified that after the stabbings, the victims pleaded with him to call 911. Although these words, taken alone, may not equate with "begging," a reasonable inference could be drawn that, at the time, the manner in which Shelly asked defendant to stop was akin to "begging," and thus, no error occurred.

¶ 146 Defendant also takes issue with the State's comments that the only voices defendant heard were those "begging for their lives" and "the dreams vanishing from their homes." For the reasons we found previous similar comments not to be erroneous, we find no error again. Additionally, the State's reference to "the only voices heard by this guy" is clear sarcasm, which again, we have not found was pervasive, and thus, allowable.

¶ 147 Finally, defendant asserts that the State's comments in its rebuttal argument regarding what a sane person does after he commits a crime versus what an insane person does were not based on the evidence, were false, and were erroneous. The State contends that these comments were invited and based on the evidence because defendant's conduct indicated that he sought to control the police and manufacture evidence of his insanity. Specifically, the State contends that these comments were in reference to Officer Reichel's testimony about there being "a liability" if the officer did not document defendant's intentions to commit suicide.

¶ 148 "[C]losing arguments must be viewed in their entirety, and the challenged remarks must be viewed in context." *Wheeler*, 226 Ill. 2d 92 at 123. We find it pertinent to examine the section of the State's rebuttal that defendant cited as problematic in context with the following portion of the State's opening-closing remarks:

> "Who broadcasts their future suicide? Nobody who's going to kill themselves. Put that down on paper. You better write a report of that. If you don't, you're a liability to me. That's where his mindset is. Controlling the police, controlling the people he lives with, and betraying the people that took him in and gave him all the support and love and nurturing that he claims he did not have as a child."

These comments are a clear reference to Officer Reichel's rebuttal testimony, wherein he stated that defendant became upset with him after the officer refused to discuss the case with him.

Defendant also told the officer he would need to be committed, that he was going to kill himself, and that the officer better write it down or it would be "a liability." Officer Reichel testified that defendant wanted everyone to know that he was going to kill himself. We find that by referencing what a sane person would do, the State was merely attempting to cast doubt on defendant's insanity defense by emphasizing the fact that defendant was lucid enough to ask Officer Reichel to document his suicidal intentions, and to inform the officer that his failure to do so could be a liability. Additionally, we find the State's comments here were invited because in its closing, the defense stated, "You don't turn on your loved ones if you are in your right mind. You don't kill your family if you are a normal person." The State's comments to the contrary were in direct response to the defense's line of argument. Viewing the State's comments in context, we find no error.

¶ 149 Finally, defendant argues that the end of the State's rebuttal, in which it told the jury not to "reward" defendant with a finding of not guilty by reason of insanity, was a misstatement of the law. We disagree, and find that rather than misstating the law, the State was asking the jury to find in its favor, which is not improper. Although the State referred to a finding of not guilty by reason of insanity as being a "reward," it is clear the State was indicating that any finding in defendant's favor would have been a "reward." In other words, the "reward" the State referenced would have been a defense victory, which in this case, where the defense did not seek an instruction on the verdict of guilty but mentally ill[6], could have only come in the form of a verdict of not guilty by reason of insanity. Because the State's reference to a reward was merely a request to find in its favor, no error occurred. Therefore, we need not address the remainder of

[6] "A person who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility for his conduct and may be found guilty but mentally ill." 720 ILCS 5/6-2(c) (West 2008).

plain error analysis where we have not found any of the State's closing argument that defendant takes issue with to be a clear or obvious error.

¶ 150 As an alternative to plain error review, defendant argues that his trial counsel was ineffective for failing to preserve these comments for appeal. In order to prevail on a claim of ineffective assistance of counsel, a defendant must show both (1) that his counsel's performance was objectively unreasonable under prevailing professional norms, and (2) that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Having determined that all of the allegedly improper comments made by the State were, in fact, not error, we also find that his trial counsel's failure to object to those comments was not objectively unreasonable. As such, defendant's ineffective assistance claim also fails.

¶ 151 Having completed our plain error review as to the unpreserved comments, we turn back to the sole preserved comment that: "[Defendant] was able to get an apartment, and his name was on the lease. Do you really think a landlord is going to let him sign a lease if the landlord thought he was so mentally unstable or actively psychotic?" The State contends that this comment was based on a fair inference stemming from defendant's testimony that his name was on the lease. We agree because it is reasonable to infer that the existence of a lease necessitates the existence of a landlord. However, even if it was improper to comment on whether the landlord would have let defendant sign the lease if he was unstable, defendant suffered no prejudice, and thus, reversal is not required. "A prosecutor's remarks will be grounds for reversal only when they result in substantial prejudice to the defendant." *People v. Desantiago*, 365 Ill. App. 3d 855, 866 (2006). We find that no substantial prejudice resulted here where the jury was made aware, on a repeated basis, that the only relevant inquiry was into defendant's

state of mind at the time of the stabbings. Thus, a reference to defendant's state of mind at the time he signed the lease (a date which is unclear) would not have weighed in the minds of jurors who were only concerned with defendant's ability to appreciate the criminality of his conduct on the date in question. As such, the preserved comment by the State was not erroneous.

¶ 152 III. CONCLUSION

¶ 153 Based on the foregoing, we affirm the decision of the trial court.

¶ 154 Affirmed.