2018 IL App (1st) 160795-U
No. 1-16-0795
Order filed September 21, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KENNETH B. THOMPSON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County. No. 13-CF-8782 Honorable William T. O'Brien, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justice Zenoff concurred in the judgment.
Justice Hutchinson dissented.

ORDER

¶ 1 *Held*: (1) The State proved defendant guilty beyond a reasonable doubt of threatening a public official: although defendant was speaking to a treating physician, the trial court was entitled to infer that, given the seriousness of the threat, defendant knew that it was practically certain that the public official would be warned of the threat; (2) the trial court did not abuse its discretion in sentencing defendant to the maximum 10 years' imprisonment for threatening a public official: despite the mitigating evidence, which the court considered, the sentence was justified by the seriousness of the offense, in that defendant had not only threatened the official but demonstrated his intent to carry it out.

¶ 2 Following a bench trial, defendant, Kenneth B. Thompson, was found guilty of two counts of threatening a public official (720 ILCS 5/12-9(a) (West 2012)). The trial court

sentenced him to 10 years in prison. Defendant timely appealed. Defendant argues that (1) the State failed to prove him guilty beyond a reasonable doubt and (2) his sentence was excessive. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On May 3, 2013, defendant was indicted on two counts of threatening a public official (*id.*). The public official at issue was Margaret Stanton McBride, a justice on the First District Appellate Court in Chicago. The indictment alleged that, on or about March 18, 2013, defendant "knowingly conveyed a threat to a public official *** [i]n that he indirectly communicated a threat that would place [her] in reasonable apprehension of immediate or future bodily harm," and that he had done so because she had prosecuted him for the offense of rape when she was an assistant State's Attorney (ASA).

¶ 5 The following relevant evidence was presented at defendant's bench trial, which began on April 28, 2015. U Nalla Durai testified that, on March 18, 2013, he was a psychiatrist at the Jesse Brown VA Medical Center in Chicago (the hospital). On that day, he had received a consult request for a patient who had been voicing both suicidal and homicidal ideas. Durai met with defendant at about 11 a.m., accompanied by medical student Victoria Connel.

¶ 6 According to Durai, defendant told him the following. Years ago, defendant had been convicted of sexual assault and spent about 12 years in prison. He did not commit the offense and thus the conviction was unjustified. He was angry at the ASA who had prosecuted him and he was thinking about harming her. Defendant had recently moved to Illinois, after having lived in Texas for some time. Defendant found out where the prosecutor lived and went to her Glenview home multiple times. He wanted to meet with her, so that she could say she was sorry. About a week prior to entering the hospital, defendant borrowed a gun from a friend and went to

the prosecutor's house with the intent to kill her. However, defendant encountered a stranger who asked him something. This interaction caused him to become distracted and to think about what he was doing. As a result, he changed his mind and aborted the idea. Thereafter, defendant went on a cocaine binge and ultimately brought himself to the emergency room of the hospital. The doctors discovered that defendant had heart issues resulting from the cocaine use and admitted him to the medical floor.

¶ 7 Durai testified further that, after speaking with defendant, he decided that defendant needed to be transferred to the psychiatric floor of the hospital for further evaluation. Durai also believed that, because defendant had already acted on his intent by going to the prosecutor's house, Durai had a duty to warn her. Although defendant did not mention the person's name, Durai felt that defendant had provided enough information to determine who she was. Durai informed the hospital detectives and the hospital police about what defendant had told him. In the past 19 years that he had worked at the hospital, Durai had never warned the detectives about a patient.

¶ 8 On cross-examination, Durai testified that he had no independent knowledge as to whether defendant had actually acted on his intent. Durai believed that defendant had gone to the hospital because he felt physically ill. Defendant told Durai that "he felt that he needed to save himself from himself." Defendant was referring to his preoccupation that he had to kill the prosecutor. Durai agreed that defendant was indicating that he wanted treatment.

¶ 9 Rebecca Goedken testified that, on March 18, 2013, she was working as a psychiatry resident at the hospital and met with defendant in the inpatient psychiatry unit, after defendant had met with Durai. Defendant had been admitted to the unit for homicidal ideation. Defendant told her the following. He had been convicted of rape and had been incarcerated for 12 years.

He was angry about the conviction and wanted to shoot "the judge" who had wrongfully convicted him. It took him five years to track her down and he was sure that he found the right person. Defendant did not tell Goedken the name of the judge. Defendant had a chance to shoot the judge but missed the opportunity when an innocent bystander said something to him. He did not want to get innocent people involved. He had a loaded gun with him at the time. At one point, he was close enough to shoot the judge, and it felt good because he was finally going to get closure. He was angry about the missed opportunity. Defendant told Goedken that this had taken place in public. When Goedken discussed with defendant the consequences of shooting someone, he told her that he was not afraid to go back to jail and was not afraid to go down with the judge. Defendant also told Goedken about his conversation with Durai. According to defendant, Durai had suggested to defendant that he might get closure by sitting down and talking to the judge. Defendant told Durai that he had not thought about that, because it would be harder to get her to sit down with him than it would be to shoot her.

¶ 10 On cross-examination, Goedken testified that defendant brought himself to the emergency room on March 16, 2013, and was admitted to one of the medical services. She had not spoken with Durai prior to meeting with defendant. She knew from defendant's medical chart that psychiatry was consulted for homicidal ideation. She was aware that defendant had been at a VA hospital in Texas, but she did not have access to those records. Defendant gave her very little detailed information about the gun, where exactly he encountered the judge, how close he got to her, or how he got there.

¶ 11 Myphon Nguyen testified that, on March 19, 2013, he was a psychiatry resident at the hospital and met with defendant. Nguyen knew that defendant had been admitted for homicidal ideation and intent to kill a judge who had wrongfully convicted him of rape and armed robbery.

Defendant told him that the person he wanted to kill was Judge Margaret Stanton McBride. Defendant told him that McBride did not do her homework and wrongfully convicted him. Defendant felt that he was framed and was very angry. He felt that he had not been given a fair trial. He was in prison in Illinois for 12½ years. He was released in 1993. Defendant lived in Texas for many years and was doing well until he had legal troubles and his past convictions had come up. He became angrier about McBride and, about five years earlier, he relocated to Chicago with the plan to find McBride and kill her. He knew where McBride lived and worked and he had been following her for a long time. He had rented a gun, followed McBride, and gotten close enough to take a shot, but was interrupted by a bystander, which he felt was a message from God. He aborted the plan and returned the gun. Eventually he checked himself into the hospital for help. Defendant told Nguyen that he was going to go down with the judge and kill himself rather than go back to prison. He was angry with her and wanted closure. He was going to get closure by killing her.

¶ 12 Nguyen further testified that on March 20, 2013, he continued to treat defendant. Defendant continued to express anger toward the judge but not homicidal ideation. Defendant was considering other ways to find closure. He told Nguyen that, if McBride sat down and talked with him, she would have to apologize.

¶ 13 On cross-examination, Nguyen testified that defendant did not tell him how long he had been following McBride, where he followed her to or from, or where he was when he saw her. He did not tell him where he obtained the gun, whom he obtained it from, or if it was loaded. Nguyen could not recall if defendant told him that he had been receiving treatment in Texas or if Nguyen reviewed any medical records from Texas. Nguyen testified that he had seen defendant on March 19, 20, 21, and 22, and was accompanied by Dr. Gonzalez and a medical student.

Nguyen diagnosed defendant with paranoid schizophrenia. Defendant had previously been diagnosed with schizoaffective disorder. Auditory and visual hallucinations can be a part of paranoid schizophrenia. When Nguyen saw defendant on March 19, defendant was not suffering from homicidal ideation, but defendant said that he was still very angry.

¶ 14 Victoria Konold testified that, on March 18, 2013, she was a medical student doing a rotation in psychiatric consults at the hospital under the supervision of Durai. She met with defendant on the general medicine floor of the hospital, where he had been admitted to rule out acute coronary syndrome. Durai was present along with another resident physician and a fourth-year medical student. Defendant told her that he had served time for rape and armed robbery and that he had been framed. He told her that he had asked the ASA if she felt bad about condemning an innocent man and that the ASA replied that she did not care one way or the other. For the past 30 years, defendant had thought about confronting and killing the ASA. Defendant told Konold that he had moved to Texas and had fallen in love. He wanted to move to Asia to be with the person he had fallen in love with, but he was prevented from doing so because he was on the sex offender registry list and was a convicted felon. Defendant then moved back to Chicago to gain closure by confronting the ASA. Defendant had gone to her Glenview home many times. He planned to confront her and kill her. He never went through with the plan, because he decided to talk to her to see if she had any remorse. About a week prior to going to the hospital, defendant borrowed a gun from a friend and went to Glenview with the intention of killing the ASA. When he arrived in Glenview, he was asked a question by a passerby, which made him rethink his actions. Konold testified that defendant still presented homicidal ideation while she was speaking with him. Durai and she decided to admit defendant to the inpatient psychiatric floor, and Durai was going to notify the police.

¶ 15 On cross-examination, Konold testified that defendant told her he took the train to Glenview, but did not say where the home was located, or how long he was there. He did not tell her the time of day or describe the passerby he had encountered. Konold believed that defendant encountered the passerby outside of the ASA's home.

¶ 16 Joseph Fogarty testified that, on March 21, 2013, he was a detective at the hospital. At approximately 2:20 p.m., he received a call from Durai, informing him that he had a patient who told him that he was in town to kill the judge who was the prosecutor on his case 30 years ago. Thereafter, Fogarty called the Office of Security and Law Enforcement and the Illinois State Police. On March 22, 2013, he received a call from Glenview Police Detective Tim Heiser. Fogarty told Heiser that defendant was in a locked ward at the hospital. On March 26, 2013, Fogarty, along with Todd Damasky and Tammy Girten of the Illinois State Police, interviewed Durai. Thereafter, they interviewed defendant.

¶ 17 Fogarty testified that the interview of defendant began with defendant stating that he was not a threat to the judge. Defendant repeated that statement multiple times. Defendant said that he was frustrated with the judicial system and the sex offender registry. Defendant said that the judge's name was McBride. Defendant admitted that he took a Metra train to Glenview to look for the judge and that this had occurred the day before defendant went to the hospital. Defendant said that he had learned where she lived from friends or sympathizers, but he would not identify those individuals. While walking in the parking lot, defendant saw someone who looked like McBride. A woman began to talk to him and he became distracted. When the police asked him whether he had a weapon, he told them that, if he had wanted her dead, she would have been dead.

¶ 18 Fogarty testified that, on April 2, 2013, he spoke with Heiser at the hospital. Heiser had a warrant for defendant's arrest. Heiser arrested defendant, and Fogarty helped to transport him to the Glenview police department.

¶ 19 On cross-examination, Fogarty testified that defendant told him that he did not have a gun when he went to Glenview.

¶ 20 Heiser testified that, on March 22, 2013, he met with McBride, who went to the Glenview police department to file a complaint. Heiser then contacted Fogarty, who faxed his report to Heiser. Fogarty told Heiser that defendant was in a locked ward at the hospital. On April 2, 2013, Heiser received an e-mail from Fogarty and copies of Illinois State Police reports detailing interviews with the doctors involved. Fogarty then obtained an arrest warrant for defendant. On April 3, 2013, Heiser arrested defendant and transported him to the Glenview police department.

¶ 21 Heiser testified that he, along with ASA Brian Volkman, interviewed defendant after Volkman read defendant his *Miranda* rights. Defendant told them the following. In 1982, he was wrongfully convicted of a rape and served time in prison. After he was released from prison, he moved to Texas. In 2008, he moved back to Chicago. He knew that the clerk's office had evidence that would exonerate him. The prosecutor who convicted him was Margaret Stanton. He was upset with her because she smiled at him and knew that he had been wrongfully convicted. When he returned to Chicago, he rode the train as a form of therapy. He met an individual named " 'White Boy,' " who told him that Stanton lived in Glenview. After he was wrongfully convicted, he wanted to kill Stanton. He would take the Metra train from Union Station to Glenview. Two days before he checked into the hospital, he had taken the train to Glenview. He was walking and saw a woman he thought was Stanton. He wanted to approach

her and talk to her, but another woman approached him and started talking to him. He lost track of where Stanton had gone, so he got back on the train and returned to the city. Two days later, he checked himself into the hospital.

¶ 22 Heiser testified that defendant also told him that, after he served his sentence and moved to Texas, he had to register once a year. It was a hassle to register and he could not live near schools. He felt that he was wrongly convicted and that he should not have to register. He had begun a relationship with a woman in Texas, but it did not work out because he had to register. Defendant stated that he was not a danger and would never hurt anybody. He did not have a gun on the day that he saw the woman he believed to be Stanton.

¶ 23 On cross-examination, Heiser testified that defendant referred to Margaret Stanton McBride as Margaret Stanton.

¶ 24 Dane Cleven testified that in 1982 he worked as a Cook County ASA. He, along with ASA Margaret Stanton, prosecuted defendant for rape. Following a three-day jury trial, defendant was found guilty and sentenced to 25 years in prison. Margaret Stanton was now known as Margaret Stanton McBride. She lived in Glenview.

¶ 25 Patrick Cronin, the security manager for the Supreme Court of Illinois, testified that his job was to ensure the safety and welfare of the supreme and appellate court justices. On March 22, 2013, Cronin received a call from Illinois Supreme Court Marshall Robert Shay advising him of a death threat against Justice McBride and asking Cronin to contact her. He telephoned Justice McBride and told her to file a complaint with her local police department. Later, Cronin received a phone call from an officer with the Glenview Police Department verifying the death threat. Cronin also spoke with Fogarty, who told him that defendant was incarcerated at the hospital. Cronin had no contact with defendant.

¶ 26 John Mack testified that he was an investigator for the Illinois State Police. On March 22, 2013, he received information that Justice McBride had been informed of a threat made against her. He met with her and conducted security assessments of her office and of her Glenview residence. Justice McBride was very apprehensive and concerned about the threat. Mack had no contact with defendant.

¶ 27 Over defense objection, the State admitted three exhibits into evidence: (1) a certified copy of defendant's Texas sex offender record information; (2) a July 2007 prerelease notification from the Texas sex offender registration program; and (3) sex offender registration records signed by defendant in October 2008. The State also introduced into evidence a warranty deed and a document from the Secretary of State with Justice McBride's personal information redacted.

¶ 28 At the close of the State's evidence, defendant moved for a directed verdict. The trial court denied the motion.

¶ 29 Defendant presented one piece of evidence by way of stipulation. According to the stipulation, if called to testify, Rodesha Capulong would testify that, on March 16, 2013, she was an emergency room attending physician at the hospital and treated defendant. During treatment, defendant asked to speak to a psychiatrist. He reported that he was " 'just feeling tired of living.' " Thereafter, the defense rested.

¶ 30 The trial court found defendant guilty of two counts of threatening a public official. Defendant's amended motion for a new trial was denied and the matter was set for sentencing.

¶ 31 A sentencing hearing took place on November 2, 2015. The State asked that defendant be sentenced to the maximum extended sentence of 10 years based on his criminal history and the facts of the case. The State also requested that a stalking no contact order be entered. In

mitigation, defense counsel argued that defendant was 62 years old. After graduating high school, he joined the military in 1972 to get away from an abusive family situation. He served in the Army and attained the rank of private first class. He was discharged in 1974. Defendant was diagnosed with paranoid schizophrenia in 1974, which was part of the basis for his discharge. He had been on medication since that time. He obtained a bachelor's degree in sociology from Northern Illinois University in 1993. He completed most of his course work while incarcerated. Defense counsel asked that the minimum sentence be imposed.

¶ 32 In allocution, defendant stated, "I'm sorry for everything."

¶ 33 In imposing sentence, the court first noted that it considered the statutory factors in aggravation and mitigation as well as counsels' arguments and the presentencing investigation report. The court specifically noted that defendant suffered an unusually harsh upbringing and childhood. The court acknowledged defendant's claim of mental illness but stated that it had "some doubt" as it was entirely self-reported. The court also noted that defendant reported having a B-plus average in school and denied ever receiving special education services. The court further noted that defendant stated that he graduated from Northern Illinois University in 1993, which it found "highly unusual," given that defendant reported being a paranoid schizophrenic since 1974. The court then commented:

> "The facts of this case are aggravating in that the threats were made to a member of the criminal justice system, a person who is charged with certain duties under our system to perform certain functions. And that this grudge, this burning grudge that he had—that [defendant] had was for a very, very, very long time, and it spanned over many states. And he took some significant steps in terms of that grudge and that threat. And the Court

is very disturbed by the fact that people charged with making this system work and without these players, the system does not work.

And so when threats are made upon those people, so as because of the job that they do, it's extremely serious. As to his rehabilitation potential, like I said, this thing lasted for 30 years—or, I'm sorry. This lasted for many, many years after receiving a 25-year sentence.

Sometime after that, he went, and he wanted to even the score for what he believed to be an injustice. Based upon that, the Court is going to sentence you to ten years in the Illinois Department of Corrections."

¶ 34 Following the denial of his motion to reconsider the sentence, defendant timely appealed.

¶ 35 II. ANALYSIS

¶ 36 Defendant argues that the State failed to prove him guilty beyond a reasonable doubt of threatening a public official. At the time of the offense, section 12-9(a) of the Criminal Code of 2012 (Code) (720 ILCS 5/12-9(a) (West 2012)) provided, in pertinent part, as follows:

"(a) A person commits threatening a public official when:

(1) that person knowingly delivers or conveys, directly or indirectly, to a public official by any means a communication:

(i) containing a threat that would place the public official or a member of his or her immediate family in reasonable apprehension of immediate or future bodily harm, sexual assault, confinement, or restraint; ***

* * *

*** and

> (2) the threat was conveyed because of the performance or nonperformance of some public duty, because of hostility of the person making the threat toward the status or position of the public official, or because of any other factor related to the official's public existence."

Thus, to sustain a conviction of threatening a public official, the State must prove beyond a reasonable doubt that: (1) the defendant knowingly conveyed, directly or indirectly, a threat to a public official; (2) the threat would place the public official in reasonable apprehension of immediate or future bodily harm; and (3) the threat was related to the official's public status. *People v. Wood*, 2017 IL App (1st) 143135, ¶ 11. Defendant challenges the sufficiency of the evidence only with respect to whether the State proved beyond a reasonable doubt that defendant knowingly conveyed a threat, more specifically, whether defendant knew that his threat would be conveyed to Justice McBride.

¶ 37 Initially, we note that the parties disagree over the standard of review. Defendant maintains that our review is *de novo* because the operative facts are not in dispute. See *People v. Smith*, 191 Ill. 2d 408, 411 (2000) (reviewing *de novo* the question of whether a defendant who disposed of a gun out the window prior to his arrest had "immediate access to" or "timely control over" a weapon under the armed violence statute). The State counters by arguing that our standard of review is the well-established reasonable doubt test, because defendant is challenging the trier of fact's factual conclusion—that defendant knew that his threat would be conveyed to Justice McBride—which was decided after considering all of the evidence and drawing reasonable inferences therefrom. We agree with the State. See *People v. Ford*, 2015 IL App (3d) 130810, ¶¶ 15-16 (rejecting the defendant's argument that *Smith* applied, because "a reasonable person could draw different inferences from the undisputed facts at issue"). Thus, we

consider whether, viewing the evidence in the light most favorable to the State, " '*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). It is the trier of fact's responsibility to assess the witnesses' credibility, weigh their testimony, resolve inconsistencies and conflicts in the evidence, and draw reasonable inferences from the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). We will not set aside a criminal conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 38 A. Reasonable Doubt

¶ 39 As noted, the issue is whether the State failed to prove beyond a reasonable doubt that defendant knowingly conveyed a threat. Section 4-5(b) of the Code (720 ILCS 5/4-5(b) (West 2012)) provides as follows:

> "A person knows, or acts knowingly or with knowledge of:
>
> ***
>
> (b) The result of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that that result is practically certain to be caused by his conduct."

Knowledge that a threat would be conveyed to a target can be inferred from the surrounding circumstances. See *People v. Garcia*, 2015 IL App (2d) 131234, ¶ 10 (finding that the jury could reasonably infer that the defendant knew it was a practical certainty that threats against a judge, made in the presence of law-enforcement personnel, would be brought to the judge's attention). Defendant argues that the evidence establishes only that he thought he was making statements

that, under the circumstances, would never be conveyed to Justice McBride or to anyone else not providing him with treatment. We disagree.

¶ 40 Viewing the evidence in the light most favorable to the State, we find that a rational trier of fact could have found that defendant was consciously aware that it was practically certain that his statements would be conveyed to Justice McBride. First, as the State points out, it is well known that, when a mental health professional learns of a credible threat of harm to an individual, he or she has a duty to warn that individual. A physician could be liable for his or her failure to warn a reasonably identifiable victim of a threat of serious physical violence that has been communicated to the physician by a patient. See 405 ILCS 5/6-103(b) (West 2012) ("There shall be no liability on the part of, and no cause of action shall rise against, any person who is a physician, clinical psychologist, or qualified examiner based upon that person's failure to warn of and protect from a recipient [of treatment]'s threatened or actual violent behavior *except where the recipient [of treatment] has communicated to the person a serious threat of physical violence against a reasonably identifiable victim or victims*."). (Emphasis added.) Here, defendant expressed his desire to harm the prosecutor who prosecuted him years ago, and he told Durai that she lived in Glenview. Although defendant did not specifically name Justice McBride when he spoke with Durai, he clearly had provided enough information such that one could determine her identity. Durai thus testified that he reported defendant to the hospital police because he felt that he had a duty to warn Justice McBride.

¶ 41 Moreover, even absent such a duty or defendant's knowledge thereof, the content of defendant's statements allows for a reasonable inference that defendant was consciously aware that it was practically certain that his threat would be passed on to Justice McBride. Not only did defendant express his desire to harm Justice McBride, he also told Durai and multiple other

individuals that he had acted on that desire. Defendant indicated that he knew where McBride lived, that he rented a gun, and that he traveled to Glenview with the gun intending to harm her. Indeed, Durai testified that his duty to warn Justice McBride was particularly pressing because defendant told him that he had already acted on his desire to harm her. The trial court was entitled to infer that defendant was not "so uncommonly naïve" as to think that no such warning would occur. *Garcia*, 2015 IL App (2d) 13124, ¶ 10.

¶ 42 Defendant's reliance on *People v. Wood*, 2017 IL App (1st) 143135, does not warrant a different conclusion. In *Wood*, the defendant was convicted of threatening a public official, based on a voicemail he left for his public defender. *Id.* ¶¶ 1-9. The voicemail was "a crude and offensive rant" detailing how much the defendant hated everyone involved in his legal case. *Id.* ¶ 1. The defendant commented that he dreamed every day about revenge. *Id.* ¶ 4. He singled out the judge who presided over his case, stating that he hoped for his death and destruction. *Id.*. The public defender notified the judge. *Id.* ¶ 5 The defendant testified that he never intended the message for the judge nor did he think the judge would hear it. *Id.* ¶ 7. He stated that he was overwhelmed by his legal troubles and wanted to tell the public defender how he felt. *Id.* The defendant appealed.

¶ 43 The First District reversed the conviction based on the insufficiency of the evidence. *Id.* ¶ 30. First, the court found that the State failed to prove beyond a reasonable doubt that the voicemail was a threat (*id.* ¶¶ 13-22). Second, the court found that the State failed to prove beyond a reasonable doubt that the defendant acted knowingly. *Id.* ¶ 28. The court noted the defendant's testimony that he did not intend for the judge to hear his message and that he specifically chose the public defender because he thought that he could air his grievances confidentially. *Id.* ¶ 27. The court concluded that there was no evidence that the defendant knew

that it was practically certain that the statement would be conveyed to the judge, despite the fact that the public defender felt obligated to convey it. *Id.* ¶ 28.

¶ 44 Defendant claims that the present case is similar to *Wood* because he made his statements to medical professionals believing them to be confidential. We note that *Wood* is distinguishable because, here, defendant does not dispute that his statements constituted a threat. More importantly, however, the statements in the present case consisted of not only defendant's desire to harm Justice McBride but also his claims that he had already acted on that desire. Given the content of defendant's statements, the fact that defendant made these statements to medical professionals does not negate the reasonable inference that he did so with knowledge that the statements would be conveyed to Justice McBride.

¶ 45 While the dissent states her fear that we are sending a message to mental health patients, such a consideration requires us to speculate over the possibility of potential negative side-effects from rulings of this court. While we are not unmindful of such unintended consequences, we will never know whether such is the case, and we cannot dwell on such speculation. We must consider the appropriate standard of review–whether " '*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

¶ 46 Additionally, the dissent's stated concern over whether there is reason to doubt whether defendant actually traveled to Glenview, with or without a gun, misses the point. The point is whether defendant made the statements in question and whether he had the intent that they be communicated to Justice McBride, not whether the statements are actually true. A false statement may be communicated with the intent to threaten just as much as a truthful statement

may be communicated with the intent to threaten–the truthfulness of the statement is not the issue. A false statement, depending on the content, may actually be more threatening than a truthful statement.

¶ 47 Finally, while the dissent points out that the court did not make a specific finding with respect to whether defendant was consciously aware that it was practically certain that his statements would be conveyed to Justice McBride, such a finding is implicit in the trial court's ruling, which is sufficient.

¶ 48 Based on the foregoing, we cannot say that no rational trier of fact could have found that defendant was consciously aware that it was practically certain that his threat would be conveyed to Justice McBride.

¶ 49 B. Excessive Sentence

¶ 50 Defendant next contends that the 10-year sentence was excessive, arguing that the trial court failed to properly consider the mitigating evidence and his rehabilitative potential.

¶ 51 "[T]he trial court is in the best position to fashion a sentence that strikes an appropriate balance between the goals of protecting society and rehabilitating the defendant." *People v. Risley*, 359 Ill. App. 3d 918, 920 (2005). Thus, we may not disturb a sentence within the applicable sentencing range unless the trial court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000). A sentence is an abuse of discretion only if it is at great variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Id.* at 210. We may not substitute our judgment for that of the trial court merely because we might weigh the pertinent factors differently. *Id.* at 209.

¶ 52 In determining an appropriate sentence, relevant considerations include the nature of the crime, the protection of the public, deterrence, and punishment, as well as the defendant's

rehabilitative prospects. *People v. Kolzow*, 301 Ill. App. 3d 1, 8 (1998). The weight to be attributed to each factor in aggravation and mitigation depends upon the particular circumstances of the case. *Id.* "The seriousness of the crime is the most important factor in determining an appropriate sentence, not the presence of mitigating factors." *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). There is a presumption that the trial court considered all relevant factors in determining a sentence, and that presumption will not be overcome without explicit evidence from the record that the trial court did not consider mitigating factors or relied on improper aggravating factors. *People v. Payne*, 294 Ill. App. 3d 254, 260 (1998).

¶ 53 Here, defendant was convicted of threatening a public official, a Class 3 felony, with a sentencing range of 2 to 5 years (720 ILCS 5/12-9(c) (West 2012); 730 ILCS 5/5-4.5-40(a) (West 2012)). However, because defendant had been convicted in 2009 of failure to register as a sex offender, a Class 3 felony (730 ILCS 150/3(a)(1), 10(a) (West 2012)), he was eligible for an extended-term sentence of 5 to 10 years (730 ILCS 5/5-4.5-40(a), 5-5-3.2(b)(1) (West 2012)). Thus, although the trial court imposed the maximum possible sentence, it was properly within the authorized range.

¶ 54 The court's statements concerning defendant's background and character make clear that it considered the factors in mitigation and defendant's rehabilitative potential. But, importantly, the court's comments also indicate that it considered the seriousness of the offense to be the most important factor. As the trial court recognized, defendant's threat was the product of a "burning grudge" that lasted for many, many years and "spanned over many states," leading defendant to take "some significant steps in terms of that grudge and that threat." Defendant not only threatened Justice McBride but also had demonstrated his intent to carry it out. Thus, we find that the trial court did not abuse its discretion in sentencing defendant to 10 years' incarceration.

¶ 55 III. CONCLUSION

¶ 56 For the reasons stated, the judgment of the circuit court of Cook County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $100 as costs for this appeal (55 ILCS 5/4-2002.1 (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978)), and $50 as costs for oral argument (55 ILCS 5/4-2002.1 (West 2016); see also *People v. Agnew*, 105 Ill. 2d 275, 277-80 (1985)).

¶ 57 Affirmed.

¶ 58 Justice HUTCHINSON, dissenting:

¶ 59 While I am fearful of the animosity that undoubtedly exists within defendant, I am more fearful of the message that the majority's decision sends to mental health patients. I respectfully dissent.

¶ 60 "The State cannot criminalize a defendant's dream for revenge unless, along with that expressed dream, the defendant seriously expresses an intention to commit an act of unlawful violence to fulfill his dream. There was no such expression in this case. The referenced statements do not warn of any future harm." *People v. Wood*, 2017 IL App (1st) 143135, ¶ 22. These comments from *Wood* accurately characterize my thoughts here.

¶ 61 Defendant never told his doctors that, upon his release from the hospital, he intended to harm Justice McBride. To the contrary, defendant told Dr. Durai that he "felt he needed to save himself from himself." Durai, a treating psychiatrist, understood this to mean that defendant was seeking treatment—so that he would *not* harm Justice McBride or anyone else. A mental health patient harboring dreams of revenge against a public official should be encouraged to seek help like defendant did here. And yet, my colleagues have strained to interpret defendant's statements for the purpose of affirming his conviction.

¶ 62 The only evidence that defendant was ever close to harming Justice McBride comes from defendant himself. Thus, considering that Dr. Nguyen diagnosed defendant with paranoid schizophrenia, there is reason to doubt whether defendant ever actually traveled to Glenview, let alone with a gun. Regardless, I believe the record supports defendant's argument that his statements to doctors were made for the purpose of obtaining psychiatric help, rather than for the purpose of conveying a threat to Justice McBride, whom defendant repeatedly identified only as a prosecutor from decades ago who currently lives in Glenview. I note that most of the statements in question were made while defendant was in the locked psychiatric ward under observation by the identified staff, and he later told officer Fogarty that he was not a threat to Justice McBride.

¶ 63 The majority nonetheless concludes that "a rational trier of fact could have found that defendant was consciously aware that it was practically certain that his statements would be conveyed to Justice McBride." *Supra* at ¶ 40. However, the majority neglects to mention that the trial court never made any such finding. Although the court correctly cited the elements of the offense of threatening a public official, there were no specific findings made with respect to section 4-5(b) of the Code. The court never found that defendant was "consciously aware" that it was "practically certain" that his statements would be characterized as threats and relayed to Justice McBride. See 720 ILCS 5/4-5(b) (West 2012). Despite this shortcoming, the majority accepts the State's argument that it is "well known that, when a mental health professional learns of a credible threat of harm to an individual, he or she has a duty to warn that individual." *Supra* at ¶ 40. Well known? By whom? Based on what? This seems an inadequate justification for affirming the trial court's flawed determination of defendant's intent beyond a reasonable doubt.

¶ 64 The majority cites section 6-103(b) of the Mental Health and Developmental Disabilities Code (405 ILCS 5/6-103(b) (West 2012)) to support its statement that "[a] physician could be liable for his or her failure to warn a reasonably identifiable victim of a threat of serious physical violence that has been communicated to the physician by a patient." *Supra* at ¶ 40. I note, however, that "[a]ny duty which any person may owe to anyone *** shall be discharged by that person making a reasonable effort to communicate the threat to the victim and to a law enforcement agency, *or by a reasonable effort to obtain the hospitalization of the recipient* [of treatment]." (Emphasis added.) 405 ILCS 5/6-103(c) (West 2012). Thus, contrary to the State's position, although Durai did communicate defendant's statements to the officers, it was not practically certain that he was required to do so. Because Durai had already caused defendant to be transferred to the psychiatric floor of the hospital for further evaluation, he was under no statutory obligation to inform Justice McBride of defendant's statements.

¶ 65 Under the Health Insurance Portability and Accountability Act (HIPAA), patients are notified when they visit their doctors that their medical information is confidential, and that transmitting this information to another generally requires the patient's explicit permission. See 45 C.F.R. § 164.520 (West 2012). Thus, if anything is "well known," it is that statements made to one's doctors are privileged. I have a hard time accepting that lay persons, including those diagnosed with mental health issues, are expected to know the legal exceptions to the doctor-patient privilege. But even if it is "well known" that mental health professionals must warn individuals of credible threats, should prosecutors be emboldened to use this as a tool for convicting mental health patients who seek help from their doctors to overcome their horrific dreams of revenge? I submit that the answer to this question is a resounding "no."

¶ 66 I have previously taken a similar position about a person who was convicted of a serious criminal charge as a result of his hospitalization for mental health issues. Although the charges are different, both cases turn on circumstances that had more reasonable alternatives. I dissented in *People v. Pearse*, 2016 IL App (2d) 140051-U, a case in which the majority affirmed the defendant's conviction for failing to timely register as a sex offender after he spent time receiving inpatient mental health treatment and subsequently returned to his long-time family address. It appeared to me that there was a deliberate indifference on the part of the law enforcement officers and prosecutors, and I noted that affirming defendant's conviction would have a chilling effect on a sex offender's willingness to seek medical or mental health treatment. *Id*. ¶ 64 (Hutchinson, J., dissenting).[1] I have similar reservations here.

¶ 67 The majority implies that I am mistaken to consider the message being sent to mental health patients, because "such consideration requires us to speculate over the possibility of potential negative side-effects from rulings of this court." *Supra* at ¶ 45. I respectfully disagree. It is a precarious day for mental health patients when they can be exposed to criminal liability for being open and honest with their doctors, as nefarious ulterior motives can be deciphered from their expressly stated intentions. What would the majority have defendant do differently in this case? Be less candid? Perhaps refrain from discussing his "dream for revenge" altogether? My fears about the repercussions of today's decision are not based on speculation, they are based on what I perceive to be an erroneous application of the law. In my mind, the only speculation in this case resides within the majority's reasoning—that defendant was "practically certain" his

[1] Our supreme court reversed the majority's decision in *People v. Pearse*, 2017 IL 121072, albeit on different grounds than those discussed here.

statements would be reported to Justice McBride because it is "well known" that doctors must report such statements.

¶ 68 In closing, I share my colleagues' concerns with this case. On a personal note, I once received a letter from unhappy litigants who were later arrested with guns and other miscellaneous forms of weaponry in their possession. I ultimately testified at their trial and sat looking into their faces. My terror in those moments is rekindled when I think of defendant seeking out our appellate court colleague with visions of murderous revenge. However, the facts in this case simply do not justify defendant's conviction, and the majority's decision has done nothing to protect public officials. In fact, by failing to recognize the insufficiency of the evidence, I believe the majority has made things worse. A chilling message has been sent to mental health patients harboring dreams of revenge against public officials that they should refrain from seeking the help they so desperately need.

¶ 69 I am thankful that defendant checked himself into the hospital for medical treatment and requested psychiatric help. I am thankful that defendant was honest with his doctors and, with their help, worked his way to a peaceful end. I am very hopeful that defendant will engage in additional mental health treatment without fear of reprisal to help transition peacefully back into society. Unfortunately, I must disagree with the majority's holding in the strongest of possible terms.