2018 IL App (1st) 161230-U

No. 1-16-1230

Order filed March 16, 2018

Fifth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 4060
	)	
ALISHA WALKER,	)	Honorable
	)	James Michael Obbish,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Reyes and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not abuse its discretion concerning the admission into evidence of video-recorded interviews of defendant and autopsy and crime scene photographs.
(2) Defendant was not entitled to a jury instruction about the limited use of other crimes evidence because her criminal conduct of engaging in prostitution was inextricably intertwined with the charged murder offense.
(3) The evidence established defendant's guilt of second degree murder beyond a reasonable doubt.
(4) Defendant was not denied effective assistance of trial counsel.
(5) Defendant's 15-year prison term was not improper or excessive.

¶ 2 A jury found defendant Alisha Walker guilty of second degree murder, and the trial court sentenced her to a prison term of 15 years.

¶ 3 On appeal, defendant argues that (1) the trial court erroneously barred from evidence one of her recorded interviews with investigators and improperly allowed the jury to view a portion of another recording that showed her invoking her right to counsel; (2) the trial court erroneously admitted gruesome autopsy and crime scene photographs; (3) the trial court failed to *sua sponte* give the jury a limiting instruction about her prostitution-related crimes; (4) the evidence failed to establish her guilt of second degree murder; (5) trial counsel provided ineffective assistance by failing to attend the entire trial, cross-examine witnesses, raise objections, seek critical jury instructions, and move for a change of venue; and (6) the trial court failed to consider mandatory mitigating factors and imposed an excessive sentence.

¶ 4 For the reasons that follow, we affirm the judgment of the trial court.

¶ 5 I. BACKGROUND

¶ 6 In January 2014, the police gained entry to the home of the victim, Alan Filan, who had been fatally stabbed. Defendant was arrested several days later and charged with two counts of the first degree murder of the victim.

¶ 7 At the January 2016 jury trial, the State's evidence showed that on Saturday, January 18, 2014, the victim used an internet website to contact prostitutes and arranged for defendant and Marany Soeung to come to his home in Orland Park, Illinois. After defendant and Soeung arrived at the victim's home, the parties had a verbal argument about the sex act to be performed and the price. During the ensuing physical altercation, defendant stabbed and cut the victim 14 times with a knife. Defendant and Soeung left the home, and the victim died on his kitchen

floor. Eventually, defendant and Soeung drove back to their hotel in downtown Chicago and did not report the attack.

¶ 8 On January 21, 2014, the police received a request to perform a "well-being check" at the victim's house. Officer John Dargan went to the house and got no response when he rang the doorbell or knocked. He walked to the side of the house, looked in the kitchen window, and saw the victim lying on the floor. Dargan kicked in the front door and entered the home. After he viewed the victim's body in the kitchen, Dargan exited the house and reported the matter. The crime scene was secured and medical personnel and task force investigators were called to the scene.

¶ 9 Investigators recovered from the victim's kitchen counter and island beer bottles, a glass of beer, a beer can, and an open bottle of tequila. The white lining of the front left pocket of the victim's jeans was partially pulled out and contained a $5 bill. Bloody footprints led from a pool of blood on the kitchen floor through the living room and out the front door. Investigators recovered 15 latent fingerprints from the victim's house.

¶ 10 Investigators also recovered the victim's cell phone and cordless phone, and printouts from his computer of a personal advertisement from Backpage.com, a classified advertising website. The printouts referred to a female escort named "Kelis Sweetness" at phone number 702-286-**** (the Kelis phone). Investigators also obtained the victim's cell phone and landline records, which showed that he had multiple contacts on January 18, 2014 with the Kelis phone. Specifically, the victim called the Kelis phone at 9:29 a.m., 11:29 a.m., and 11:33 a.m., and received a text response at 11:36 a.m. The victim called the Kelis phone again at 2:49 p.m., 3:29 p.m., and 4:05 p.m. At 4:10 p.m., he re-texted his address to the Kelis phone. The victim

called the Kelis phone again at 4:49 p.m. He also made two phone calls from his home at 5:37 p.m. and 5:51 p.m., which were unrelated to this investigation. Then, at 5:55 p.m., the victim had a phone call with the Kelis phone that lasted for 5 minutes and 17 seconds.

¶ 11 From the cell phone provider, investigators learned that the Kelis phone was deactivated at about 6:32 p.m. on January 18, 2014, and the account holder had a new cell phone number. On January 23, 2014, investigators tracked the new cell phone number to a motel room in Fort Wayne, Indiana, which was occupied by defendant, Soeung, and Marco Vazquez. Defendant, Soeung, and Vazquez were taken to the Fort Wayne police department.

¶ 12 From the motel room, police recovered, *inter alia*, leopard print boots that belonged to Soeung, knee-high boots that belonged to defendant, a blood-stained $50 bill from Soeung's purse, jeans worn by defendant that bore a small spot of blood, bags of clothes, and multiple cell phones. The blood on the $50 bill and defendant's jeans matched the victim's DNA profile.

¶ 13 Two investigators, Sergeant Eric Rossi and Detective Joe Schmidt, first spoke with defendant at about 3:38 a.m. on January 24, 2014, for about 30 minutes. A video recording of this interview was shown to the jury. In that recording, defendant waived her *Miranda* rights and the investigators asked her questions that generally attempted to establish her whereabouts during the relevant time period. Defendant gave vague answers, declined to answer many questions, and repeatedly asked why she was being questioned. This interview was interrupted briefly when the investigators left the room to take a telephone call. When they returned, the investigators informed defendant that they were conducting a homicide investigation. The interview ended about three minutes later when defendant said that she did not want to talk anymore.

¶ 14 Then, at 9:38 a.m., Sergeant Michael Bennett and Sergeant Rossi entered the interview room, stated they were informed that defendant wanted to speak to them, and advised her of her rights. This video-recorded interview was also shown to the jury. During this interview, defendant stated that she drove Soeung to the victim's house on the date in question to perform a sex act in exchange for money. Defendant had encountered the victim on previous occasions and described him as a "good trick" who usually only wanted to talk and had given her about $1100. This time, however, defendant asserted that the victim "got weird," complained that Soeung was not the female depicted in the advertisement, and stated that he did not trust defendant and wanted his money back. According to defendant, she tried to get the victim to relax and started to perform a "hand job" on him in the living room, but he complained and said he wanted unprotected sexual intercourse. When she told him that he would have to give them more money, he "got really upset." He grabbed money from a purse on the glass coffee table, threatened to get his gun, and went into the kitchen. While Soeung put her boots back on, defendant went into the kitchen.

¶ 15 According to defendant, the victim demanded his money back. She grabbed his cordless phone and threatened to jeopardize his teaching job by calling the police. The victim slapped the phone from her hand, lunged at her, and grabbed her by her shoulders. He hit her, punched her face, and grabbed her by her neck. They "wrestled around" on the ground, and defendant pushed him off of her. The victim would not let defendant leave the kitchen. He grabbed a knife from the counter and ran toward her. She grabbed the blade end of the knife and hit and kicked him. She "blacked out," but when she "came back to it," she was standing over him and holding the knife. The victim was bleeding and stopped fighting. He yelled and "cussed [her] out," and she ran out

of the house and into her car. After she and Soeung drove away, defendant realized that she still had the knife and threw it out the window. She claimed that she had discarded most of her bloodstained clothing and did not have bruises from the fight because she did not bruise easily.

¶ 16 Surveillance video from the Inn of Chicago hotel on the date of the offense showed defendant and Soeung exit the elevator in the lobby at 4:23 p.m. Later, surveillance video from a gas station in Orland Park on the date of the offense showed defendant walk from her car and purchase some snacks at about 5:52 p.m. Additional surveillance video from the Inn of Chicago on the date of the offense showed defendant and Soeung enter the hotel's revolving door at about 8:35 p.m. and wait by the elevator lobby. In all three surveillance video recordings, defendant had the same jacket and wore the same knee-high boots and jeans subsequently recovered from the Fort Wayne motel room. Furthermore, the two recordings that showed Soeung leaving from and returning to the Inn of Chicago on the date of the offense showed that she wore the leopard print boots recovered from the Fort Wayne motel room. According to expert testimony, bloody footprints at the victim's house were similar in size and design to the leopard print boots worn by Soeung.

¶ 17 At the time of the offense, defendant was 20 years old, five feet, nine inches tall, and weighed 170 pounds. The victim was 61 years old, five feet, five inches tall, and weighed 138 pounds. Testimony from the medical examiner and photographs showed that the victim had 21 abrasions and contusions on his body. The victim sustained 4 incise wounds and 10 stab wounds, including behind his ear and to his chest, stomach, the sides of his body, and his arms. Six of the 10 stab wounds were independently fatal. His heart was damaged, his lungs and spleen were pierced, his liver was cut, his bowels were cut in three places, and his diaphragm, three ribs,

and foot were stabbed. When he received a superficial wound at the base of his neck, he was either already dead or too weak to bleed. The varied directionality of the victim's wounds indicated that he could have been twisting or turning when he was being stabbed. Two wounds on his left arm could be described as defensive wounds. In addition, a gash on the kitchen wall was consistent with a knife mark being made by a downward stabbing motion. A toxicology lab revealed that the victim had an alcohol level in the fluid of his eyes of .208 (the legal alcohol level limit for driving was .80).

¶ 18 Photographs also showed that defendant had a small cut on her pinky finger, a small abrasion on the back of her left hand and ring finger, a broken fingernail on her right ring finger, and a small abrasion on her right knee.

¶ 19 The jury found defendant guilty of second degree murder, and the trial court sentenced her to a prison term of 15 years.

¶ 20 II. ANALYSIS

¶ 21 On appeal, defendant argues that (1) the trial court erroneously barred evidence of her third recorded interview with investigators and improperly allowed the jury to see the portion of her first recorded interview that showed her invoking her right to counsel; (2) the trial court erroneously admitted gruesome autopsy and crime scene photographs; (3) the trial court failed to *sua sponte* give the jury a limiting instruction about her prostitution-related crimes; (4) the evidence failed to establish her guilt of second degree murder; (5) trial counsel provided ineffective assistance by failing to attend the entire trial, cross-examine witnesses, raise objections, seek critical jury instructions, and move for a change of venue; and (6) the trial court failed to consider mandatory mitigating factors and imposed an excessive sentence.

¶ 22 A. Illinois Supreme Court Rules 612, 341, and 342

¶ 23 This court notes that defendant has failed to comply with the provisions of Illinois Supreme Court Rules 612(i) and (j) (eff. July 1, 2016), 341(h)(9) (eff. Jan. 1, 2016), and 342(a) (eff. Jan. 1, 2005). Specifically, defendant failed to prepare a complete table of contents, with page references, of the record on appeal, which made it difficult for this court to locate testimony and other matters in the record for purposes of reviewing defendant's claims of error. The rules governing appeals are not merely suggestions, but are necessary for the proper and efficient administration of the courts. See *First National Bank of Marengo v. Loffelmacher*, 236 Ill. App. 3d 690, 691-92 (1992). This court is not required to sift through the record to find support for an issue, and ill-defined or insufficiently presented issues that do not satisfy the rules may be considered forfeited. See *Express Valet, Inc. v. City of Chicago*, 373 Ill. App. 3d 838, 855 (2007).

¶ 24 B. Admissibility of Defendant's Recorded Interviews

¶ 25 First, defendant argues that the trial court violated the common law completeness doctrine and the Illinois Rules of Evidence when the court precluded from evidence her third video-recorded interview, which occurred at a different facility and about 10 hours later than the last of her two admitted video-recorded interviews. Defendant alleges that the third interview provided "critical and indispensable context and meaning" to the actions she described in her second interview and explained with much more detail how the victim physically assaulted her, prevented her from leaving the house, and initiated the altercation.

¶ 26 Reviewing courts will not disturb a trial court's evidentiary rulings absent an abuse of discretion. *People v. Harvey*, 211 Ill. 2d 368, 392 (2004). "A trial court abuses its discretion

where its decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the trial court's view." *People v. Craigen*, 2013 IL App (2d) 111300, ¶ 45.

¶ 27 The common law completeness doctrine provides that when a witness relates a portion of a conversation, the opposing party has a right to bring out the remainder of that conversation to prevent the trier of fact from being misled. *People v. Caffey*, 205 Ill. 2d 52, 91 (2001); see also *People v. Williams*, 109 Ill. 2d 327, 334 (1985) (indicating the purpose of this principle is to place the originally offered portion of a conversation in proper context so that a correct and true meaning is conveyed to the jury). The originally offered testimony regarding the conversation must actually be misleading. *Caffey*, 205 Ill. 2d at 91. "A defendant has no right to introduce portions of a statement which are not necessary to enable the jury to properly evaluate the portions introduced by the State." *People v. Olinger*, 112 Ill. 2d 324, 338 (1986). "[T]he right to bring out all of a conversation is not absolute, but depends upon the *relevancy* of the additional parts of the conversation the party wishes to introduce. (Emphasis in original.) *Williams*, 109 Ill. 2d at 335.

¶ 28 Illinois Rule of Evidence 106 provides that when one party introduces a writing or recorded statement or a part thereof, "an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it." Ill. R. Evid. 106 (eff. Jan. 1, 2011). Rule 106 "is not a means to admit evidence that aids a defendant in proving his or her theory of the case." *Craigen*, 2013 IL App (2d) 111300, ¶ 48. "Rather, the purpose of Rule 106 is to correct the misleading nature of a *** statement *** that has been taken out of context or is difficult to understand on its own." *Id*. If a defendant does not show "that the admitted *** statement, standing alone, is

misleading, Rule 106 does not provide an avenue for admitting another writing or recorded statement." *Id.*

¶ 29 Whereas the common law completeness doctrine has been applied to oral statements, writings, and recorded statements, Rule 106 refers to only writings and recorded statements. *Id.* ¶ 42. Furthermore, whereas courts have applied the common law doctrine only to statements made on the same subject at the same time, Rule 106 allows the admission of statements that were not made at the same time as the admitted evidence. *Id.* ¶ 43.

¶ 30 According to the record, the precluded interview occurred at about 8:02 p.m. on January 24, 2014, at the Cook County Jail. The interviewers were an assistant State's Attorney and Investigator Rich Stetner. At this interview, defendant again waived her *Miranda* rights and recounted, generally consistent with her second recorded interview, the incident at the victim's house. Prior to trial, the State moved *in limine* to exclude this third interview as inadmissible hearsay, arguing that it was a separate statement from the first two interviews and did not somehow complete a statement that would be introduced at trial. The trial court granted the State's motion *in limine*. At the trial, the jury viewed the entirety of defendant's first two video-recorded statements, which have been summarized above.

¶ 31 We conclude that the trial court did not abuse its discretion by precluding defendant's third recorded interview. The jury heard the entirety of the first two recorded interviews, which were not misleading. It was not necessary for the jurors to view the third recording to prevent them from being misled, to place the admitted interviews in the proper context to convey their correct and true meaning, or to shed light on the meaning of the evidence already received. See *id.* ¶ 45.

¶ 32 Next, defendant argues that the trial court committed reversible error when it allowed the State to play the entire first recorded interview to the jury even though a portion of that interview showed her invoking her right to counsel. Defendant also argues that the trial court failed to instruct the jury to disregard her invocation of the right to counsel. Defendant, however, failed to preserve this issue for review by making both a timely objection and including this issue in her motion for a new trial. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

¶ 33 In general, a defendant preserves an issue for review by timely objecting to it and including it in a posttrial motion. *People v. Denson*, 2014 IL 116231, ¶ 11. However, we may review claims of error under the plain error rule (Ill. S. Ct. R. 615(a)), which is a narrow and limited exception to forfeiture (*People v. Hillier*, 237 Ill. 2d 539, 545 (2010)). To obtain relief under this rule, defendant must show that a clear or obvious error occurred. *Id.* Defendant bears the burden of persuading the court that either (1) the evidence at the hearing was so closely balanced (regardless of the seriousness of the error) as to severely threaten to tip the scales of justice against the defendant, or (2) the error was so serious (regardless of the closeness of the evidence) as to deny the defendant a fair trial and challenge the integrity of the judicial process. *People v. Herron*, 215 Ill. 2d 167, 187 (2005). In order to determine whether the plain error doctrine should be applied, we must first determine whether any error occurred. *Id.*

¶ 34 According to the record, the recording of the first interview played for the jury shows that Sergeant Rossi asked defendant what happened inside the house, and Detective Schmidt asked her if she was inside the house. Then, defendant responded, “I don’t want to talk anymore, you guys,” and the recording abruptly stops playing. Furthermore, the trial transcript establishes that after this recording was presented to the jury, Sergeant Rossi testified that defendant terminated

that interview by telling Rossi and Schmidt that she did not want to talk anymore, and Rossi and Schmidt exited the room at about 4:15 a.m. and left her alone. No further comment was made concerning defendant's invocation of the right to counsel.

¶ 35 We conclude that no error occurred concerning the portion of the interview played for the jury. Although it is clearly error to comment on a defendant's post-arrest silence or her exercise of her right to counsel, it is not error to elicit a complete recitation of police procedure even if it includes a reference to a defendant's exercise of her constitutional rights as long as the recitation is not argued to be indicative of guilt. *People v. Lindgren*, 111 Ill. App. 3d 112, 117 (1982). Here, the jury did not hear defendant ask to speak to counsel, and the State did not argue that her decision to stop talking to the investigators was indicative of her guilt.

¶ 36 C. Autopsy and Crime Scene Photographs

¶ 37 Defendant argues that the trial court committed plain error by admitting into evidence dozens of gruesome autopsy and crime scene photographs of the victim that were improper and unfairly prejudicial. Specifically, defendant challenges the State's introduction of 5 photographs of the crime scene as observed by the investigators and 32 photographs of the deceased victim, including images of his nude body, close ups of his face and extremities, and magnified images of his wounds from various angles. Defendant contends that these photographs had no probative value because the cause of the victim's death—stab wounds—was undisputed and no testimony connected the images to defendant's intent or state of mind. Defendant failed to preserve this issue for review by both timely objecting at the trial and raising the issue in a posttrial motion. *Enoch*, 122 Ill. 2d at 186.

¶ 38 If photographic evidence is relevant to prove facts at issue and if the probative value outweighs the potential prejudice, the photographs are admissible, even if such photographs are gruesome. *People v. Mercado*, 333 Ill. App. 3d 994, 1001 (2002). Photographs of a decedent may be admitted "to prove the nature and extent of the injuries and the force used to inflict them; the position, condition, and location of the body; the manner and cause of death; to corroborate a defendant's confession; and to aid in understanding the testimony of a pathologist or other witness." *People v. Anderson*, 237 Ill. App. 3d 621, 631 (1992). Competent evidence cannot be excluded merely because it might arouse the jurors' feelings of horror and indignation. *People v. Driskel*, 224 Ill. App. 3d 304, 315 (1991). The decision whether to admit photographs is within the sound discretion of the trial court. *People v. Fierer*, 124 Ill. 2d 176, 193 (1988).

¶ 39 The photographs included images of the 21 abrasions and contusions, 10 stab wounds, and 4 incise wounds that Dr. Latanja Watkins found on the victim's body. Dr. Watkins testified that six of the stab wounds could have been individually fatal, and the wounds on the victim's arms could have been described as defensive wounds, *i.e.*, injuries caused to an individual who is trying to defend himself. Because the defense claimed that the victim was actually the aggressor and defendant merely tried to defend herself from him, the jury needed to see the extent and severity of the victim's wounds, which were a manifestation of the force used upon him, in order to evaluate defendant's self-defense claim and assertion that the victim was alive and yelling at her when she fled the scene. We conclude that no error occurred by the trial court's admission of this relevant evidence that was not unfairly prejudicial.

¶ 40 D. Jury Instructions and Other Crimes Evidence

¶ 41 Defendant argues that the trial court committed plain error by failing to *sua sponte* instruct the jury not to consider defendant's other alleged criminal activities, *i.e.*, prostitution, when determining her guilt of the charged offense. Defendant failed to preserve this issue for review by both timely objecting at the trial and raising the issue in a posttrial motion. *Enoch*, 122 Ill. 2d at 186.

¶ 42 According to the record, the State and defense counsel acknowledged and agreed before the trial started that evidence about defendant's history of prostitution would be admitted because it explained how the victim and defendant came into contact where the victim solicited her and Soeung for the purpose of prostitution. The trial court then explained to defendant the purpose of other crimes evidence and confirmed that she agreed with her counsel's decision not to object to the evidence about her engaging in prostitution. See *People v. Schickel*, 347 Ill. App. 3d 889 (2004) (the doctrine of invited error provides that an accused may not request to proceed in one manner and then later contend on appeal that the course of action was in error).

¶ 43 Evidence of other crimes is admissible if it is relevant for any purpose other than to show the defendant's propensity to commit crime. *People v. Wilson*, 214 Ill. 2d 127, 135 (2005). However, evidence of other offenses that are inextricably intertwined with the matter being charged are not equated with "other crimes" evidence and are admissible as part of the continuing narrative of the charged offense. *People v. Pikes*, 2013 IL 115171, ¶ 20; *People v. Hensley*, 2014 IL App (1st) 120802, ¶ 51; *People v. Manuel*, 294 Ill. App. 3d 113, 123-24 (1997); see also *People v. Adkins*, 239 Ill. 2d 1, 31-33 (2010) (chronicling cases cited therein). The rule against other crimes evidence is not implicated when the evidence is relevant to show

the course of conduct and an illicit relationship between the parties. *Manuel*, 294 Ill. App. 3d at 124. In those cases, only the ordinary relevancy principles apply. *Id*. Furthermore, the failure to issue a limiting instruction at the time the evidence of other crimes is admitted is not reversible error (*People v. Heard*, 187 Ill. 2d 36, 61 (1999)), the trial court is not obligated to issue such an instruction *sua sponte* (*People v. Musitief*, 201 Ill. App. 3d 872, 877 (1990)), and the absence of such a limiting instruction is not plain error (*People v. Denny*, 241 Ill. App. 3d 345, 360 (1993)).

¶ 44 We conclude that no error occurred where the trial court did not issue, *sua sponte*, a limiting instruction about defendant's own admission that she was a prostitute. This evidence was inextricably intertwined with the charged offense and necessary to explain the circumstances surrounding the victim's murder. The encounter between the victim and defendant was not a chance meeting but rather a meeting for the specific purpose of engaging in prostitution.

¶ 45 E. Reasonable Doubt

¶ 46 Defendant argues that the State's evidence was not sufficient to prove her guilt of second degree murder because the State failed to offer any evidence to disprove self-defense and no rational trier of fact could conclude that the State proved beyond a reasonable doubt that she did not act in self-defense.

¶ 47 We review the evidence in the light most favorable to the prosecution to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Hall*, 194 Ill. 2d 305, 330 (2000). A conviction will not be set aside unless the evidence is so improbable or insufficient that there remains a reasonable doubt as to the defendant's guilt. *People v. Campbell*, 146 Ill. 2d 363, 374 (1992). On appeal, it is not the function of the reviewing court to retry a defendant when considering the sufficiency of the

evidence; rather, determinations concerning credibility, the weight to be afforded each witness's testimony, and the inferences to be drawn from the evidence are for the trier of fact. *People v. Steidl*, 142 Ill. 2d 204, 226 (1991). The trier of fact must resolve any conflicts regarding the evidence, and the reviewing court may not substitute its judgment in such a case or overturn a fact-finder's credibility determinations merely because the reviewing court would have decided the case differently. *People v. Holmes*, 198 Ill. App. 3d 766, 777 (1989).

¶ 48 To prevail on a self-defense claim, each of the following elements must be present: (1) force had been threatened against the defendant; (2) the defendant was not the aggressor; (3) the danger of harm to the defendant was imminent; (4) the force threatened to the defendant was unlawful; (5) the defendant actually believed that a danger existed, that force was necessary to avert the danger, and that the amount of force used by the defendant was necessary; and (6) all of the defendant's beliefs were reasonable. *People v. Huddleston*, 243 Ill. App. 3d 1012, 1018 (1993). When a defendant raises the issue of self-defense and introduces some evidence as to each of these elements, the burden shifts to the State to prove beyond a reasonable doubt that the defendant did not act in self-defense. *Id*. If the State negates beyond a reasonable doubt any one of the above-mentioned elements, it has met its burden and the self-defense claim must be rejected. *Id*.

¶ 49 Once the State has proved, beyond a reasonable doubt, the elements of first degree murder and that the defendant did not act in self-defense, the offense will be reduced to second degree murder if the defendant can establish the presence of a statutory mitigating factor by a preponderance of the evidence. *People v. Jeffries*, 164 Ill. 2d 104, 118 (1995). The statutory mitigating factors include that at the time of the killing, the defendant believed that

circumstances existed which justified the deadly force she used, but her belief that such circumstances existed was unreasonable. 720 ILCS 5/9-2(a)(2) (West 2014). This mitigating factor is commonly referred to as the "imperfect self-defense." *Huddleston*, 243 Ill. App. 3d at 1021. The mental states required for first and second degree murder are indistinguishable because both require either intent or knowledge. *Jeffries*, 164 Ill. 2d at 120. Second degree murder is not a lesser included offense of murder but instead is a lesser mitigated offense of first degree murder. *Id*. at 122. It is the presence of a statutory mitigating factor that modifies the offense from first to second degree murder, not the absence of intent to kill. *People v. Fausz*, 95 Ill. 2d 535, 539 (1983).

¶ 50 Defendant was charged with first degree murder. Her theory of the case at trial was that she was not guilty of first degree murder because she acted in self-defense. Because the jury found her guilty of second degree murder, she established by a preponderance of the evidence that she believed the circumstances justified using self-defense but her belief was unreasonable.

¶ 51 Based on our review of the evidence in the light most favorable to the State, we conclude that the evidence was sufficient to establish defendant's guilt of second degree murder beyond a reasonable doubt. "Whether a killing is justified under the law of self-defense is a question of fact [citations], and the fact finder is not required to accept as true the defendant's evidence in support of that defense [citations]." *Huddleston*, 243 Ill. App. 3d at 1018-19. "Instead, the trier of fact is obliged to consider the probability and improbability of the evidence, the circumstances surrounding the event, and all of the witnesses' testimony." *Id*. at 1019.

¶ 52 The jury obviously rejected defendant's story that the amount of force she used in inflicting 14 knife wounds and 21 abrasions and contusions was reasonable under the

circumstances of this case. Defendant told the investigators that she had followed the victim into the kitchen. Although she claimed that she was trying to fend off the victim, who punched her in the face, hit her repeatedly, and ultimately lunged at her with a knife, she sustained no bruises or significant cuts or abrasions from the alleged struggle. Although she claimed that she grabbed the blade end of a knife allegedly wielded by the victim, she incredibly sustained no corresponding injury to her hand. Furthermore, 6 of the victim's 10 stab wounds could have been individually fatal, and the wounds on his arms were consistent with defensive wounds. In comparison, defendant's injuries from her alleged deadly struggle with the victim consisted of the small cut on her pinky finger, a broken nail on her right ring finger, the small abrasions on her left hand and knee, and the small amount of blood on her jeans. The evidence was more than sufficient to prove that defendant's belief in the necessity of self-defense was unreasonable and she was guilty of second degree murder beyond a reasonable doubt.

¶ 53 F. Ineffective Assistance of Trial Counsel

¶ 54 Defendant argues that she was deprived of the right to effective assistance of trial counsel in at least six ways. Specifically, she alleges that (1) one of her two attorneys "failed to appear for trial and repeatedly exited the courtroom while the case was in progress," (2) counsel failed to call any witnesses to support the defense, (3) counsel failed to object to the admission into evidence of the improper and prejudicial video recording showing her invoking the right to counsel and the autopsy and crime scene photographs, (4) counsel failed to cross-examine or sufficiently cross-examine the State's 11 witnesses, (5) counsel failed to request a limiting instruction regarding the evidence that she engaged in the criminal conduct of prostitution, and

(6) counsel failed to move for a change of venue in light of the victim's well-known status in the community as a high school teacher.

¶ 55 In determining whether a defendant was denied effective assistance of counsel, we apply the familiar two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504 (1984). To prevail on a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance was deficient and that the deficient performance prejudiced the defendant. *Strickland*, 466 U.S. at 687. To demonstrate performance deficiency, a defendant must establish that counsel's performance fell below an objective standard of reasonableness. *People v. Edwards*, 195 Ill. 2d 142, 163 (2001). In evaluating sufficient prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. If either prong of the *Strickland* test cannot be shown, then the defendant has not established ineffective assistance of counsel. *Id.* at 697.

¶ 56 Defendant's claims that she was denied effective assistance of counsel lack merit. First, one of defendant's attorneys was absent from the courtroom only momentarily on two occasions (during the presentation of a video recording to the jury and when the attorney was in the building and on his way to the courtroom while the jury was being brought out). Moreover, defendant's second attorney was present on both occasions and defendant had consented on the record to the resumption of the court proceedings despite the momentary absence of the one

attorney. Consequently, defendant fails to show any prejudice from the two momentary absences of one of her two attorneys.

¶ 57 Second, defendant suggests that counsel could have called as a witness the other prostitute present at the scene, Soeung, to testify about the victim's drunkenness, threats and aggression. Defendant also suggests that unnamed expert witnesses could have testified about whether the victim's injuries and defendant's fear of reporting the incident to the police were consistent with self-defense. There is a strong presumption that counsel's performance falls within the wide range of reasonable professional assistance. *Id*. at 689. The decision to call witnesses to testify on a defendant's behalf is a matter of trial strategy, reserved to the discretion of trial counsel. *People v. Enis*, 194 Ill. 2d 361, 378 (2000). Such decisions enjoy a strong presumption that they reflect sound trial strategy rather than incompetence. *Id*. Defendant fails to indicate whether Soeung or any expert would have been willing to testify in this matter and thus fails to show any prejudice to support her claim of ineffective assistance of counsel.

¶ 58 Third, the choice of objecting to proposed evidence is a matter of trial strategy (*People v. Love*, 285 Ill. App. 3d 784, 793 (1996)), and trial counsel is not required to make losing motions or objections in order to provide effective legal assistance (*People v. Sterling*, 357 Ill. App. 3d 235, 247 (2005)). We have already concluded that the trial court properly admitted into evidence the video recording and the autopsy and crime scene photographs, so defendant cannot show that prejudice resulted from counsel's decision not to object to that evidence.

¶ 59 Fourth, defendant argues that counsel failed to cross-examine six State witnesses and failed to sufficiently cross-examine five other State witnesses. "Generally, the decision whether or not to cross-examine or impeach a witness is a matter of trial strategy which will not support a

claim of ineffective assistance of counsel." *People v. Pecoraro*, 175 Ill. 2d 294, 326 (1997). A reviewing court gives substantial deference to counsel's exercise of professional judgment about the manner in which to cross-examine witnesses. *Id*. at 326-27. Nothing in the record supports defendant's suggestion that the six State witnesses, whom counsel did not cross-examine, could or would have testified that any of the physical evidence supported defendant's self-defense claim. Furthermore, defendant fails to indicate on appeal with sufficient specificity the additional questions she believes counsel should have asked the other five State witnesses during their cross-examination and how that information would have supported her claim of self-defense. See *People v. Macias*, 2015 IL App (1st) 132039, ¶ 88 (the reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented; this court is not a depository into which a party may dump the burden of argument and research). Defendant does not show that prejudice resulted from counsel's strategic decisions concerning the cross-examination of the State's witnesses.

¶ 60 Fifth, we have already rejected defendant's arguments that the evidence about her engaging in the criminal conduct of prostitution constituted other crimes evidence and that she was entitled to a limiting instruction regarding that evidence. Accordingly, defendant cannot show either deficient performance by counsel or resulting prejudice concerning this issue.

¶ 61 Sixth, the record does not support defendant's assertion that counsel should have moved for a change of venue based on the victim's well-known status in the community as a high school teacher. During *voir dire*, the trial court spent extensive time ensuring that no potential juror had heard of defendant or the victim. Furthermore, "[i]t is not necessary that jurors be unaware of the case before they assume their role in the jury box." *People v. Taylor*, 101 Ill. 2d 377, 386 (1984).

Trial counsel is not required to make losing motions in order to provide effective legal assistance (*Sterling*, 357 Ill. App. 3d at 247), and defendant cannot show deficient performance by counsel or prejudice concerning this issue.

¶ 62 We conclude that defendant's claims of ineffectiveness of counsel fail.

¶ 63 G. Sentence

¶ 64 Finally, defendant argues that the trial court failed to consider mandatory mitigating factors and abused its discretion by imposing an excessive sentence of 15 years in prison.

¶ 65 A trial court's sentencing decisions are entitled to great deference and weight. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). Absent an abuse of discretion, a defendant's sentence will not be altered upon review, and a reviewing court may not substitute its judgment for that of the trial court merely because the reviewing court would have weighed the factors in aggravation and mitigation differently. *Id*. Whenever an imposed sentence falls within the statutorily mandated guidelines, it is presumed to be proper and will not be overturned unless there is an affirmative showing that the sentence varies greatly from the purpose and spirit of the law or manifestly violates constitutional guidelines. *People v. Boclair*, 225 Ill. App. 3d 331, 335 (1992).

¶ 66 Defendant's 15 year sentence falls within the 4 to 20 year sentencing range for the offense of second degree murder. 730 ILCS 5/5-4.5-3.0 (West 2014). Furthermore, the record establishes that the trial court considered appropriate mitigating and aggravating factors, including defendant's broken home life, nonviolent criminal background, potential for rehabilitation, and that she did not go to the victim's house intending to harm or kill him. We conclude that the trial court did not abuse its discretion in sentencing defendant to a 15 year prison term.

¶ 67 III. CONCLUSION

¶ 68 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 69 Affirmed.