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2018 IL App (3d) 160131-U

Order filed March 1, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois.
	)	
v.	)	Appeal No. 3-16-0131
	)	Circuit No. 09-CF-196
BRIAN W. TRAINAUSKAS,	)	
	)	Honorable David M. Carlson,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State's evidence sufficiently supported defendant's first-degree murder conviction. (2) The trial court exercised sound discretion in allowing the State's forensic expert to testify. (3) The trial court properly admitted defendant's shotgun and jacket into evidence. (4) Defendant's sentence was proportionate to his conviction.

¶ 2 In 2009, the State charged defendant, Brian Trainauskas, with two counts of first-degree murder and one count of concealing a homicidal death. The indictment alleged that defendant shot Monica Timar in the head with a shotgun on or about January 21, 2009. It further alleged that defendant concealed Timar's death by removing her body from his home, placing it in the

trunk of her Ford Mustang, and abandoning the vehicle at another location several blocks from his home. The court found defendant guilty on all three counts and sentenced him to 65 years' imprisonment for murder and 5 years consecutive time for concealment—a total of 70 years in prison.

¶ 3 On appeal, defendant challenges only his murder convictions. First, he claims the State presented insufficient evidence to prove his guilt beyond a reasonable doubt. Second, he argues that the trial court erred by allowing the State's expert forensic scientist to provide evidence and testify despite violating Supreme Court Rule 417 (eff. Mar. 1, 2001). Third, defendant claims the trial court erred by admitting his Mossberg shotgun and blood-stained jacket into evidence. Finally, he argues that his 70-year sentence was excessive given the facts underlying his conviction, his "insignificant" criminal history, work history, and other mitigating evidence. We affirm defendant's conviction and sentence.

¶ 4 BACKGROUND

¶ 5 On February 18, 2009, the State charged defendant by indictment with two counts of first-degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2008)) and one count of concealing a homicidal death (720 ILCS 5/9-3.1(a) (West 2008)). After over six years of pretrial litigation, including an appeal (*People v. Trainauskas*, 2013 IL App (3d) 110662-U), defendant waived his right to a jury trial on April 28, 2015. His bench trial began the same day.

¶ 6 I. State's Case

¶ 7 A. Missing Person Report

¶ 8 Dawn Keller, Timar's girlfriend, testified that Timar stayed at her house on January 18 and 19, 2009. Timar called Keller in the late evening on January 20; their conversation ended after midnight on January 21. Timar asked to stay with Keller again that night, but Keller refused

because she had an early morning work meeting. When Timar did not respond to Keller's calls and messages on January 21, Keller called Timar's sister.

¶ 9 Keller and Timar's family reported her missing and suicidal on January 21. Keller did not believe Timar would commit suicide, but she wanted police to search for Timar immediately rather than waiting hours or days for her to turn up. On cross-examination, Keller admitted that Timar previously stated she hit herself with a hammer when Keller asked about an abrasion on Timar's head. After losing her job in November 2008, Timar experienced financial difficulties and struggled to find another job.

¶ 10 Christopher Minnick, Timar's brother-in-law, testified that he reported Timar missing and suicidal after his wife spoke to Keller. Like Keller, Minnick did not believe Timar would commit suicide when he called the police.

¶ 11 Gregory Michael Laws, Timar's former neighbor in Frankfort and defendant's high school classmate, testified that defendant met Timar at a Christmas party. They shared a mutual interest in birds and became friends. Timar occasionally used defendant's computer for e-mail and job searches.

¶ 12 Laws heard that defendant intended to move out of state for a new job, so he went to defendant's house in Frankfort Square on January 22 to say goodbye. When Laws arrived, two other friends were sitting in defendant's downstairs living room discussing where Timar could be. Defendant asked his guests not to use his downstairs bathroom. Laws smelled fresh paint while he sat in the living room.

¶ 13 At around 8 a.m. the next morning, January 23, Deputy Ted Falasca found Timar's abandoned Ford Mustang in Frankfort Square. He testified that he smelled a faint odor and noticed red smudges on the back bumper and tail lights as he approached the vehicle. He then

secured the scene and called dispatch. Sometime after evidence technicians and the fire department arrived to open the trunk, Falasca observed "an individual in the back of the vehicle."

¶ 14 B. Timar's Mustang

¶ 15 Deputies Terence Bergin and Julianne Budde, evidence technicians, processed Timar's Mustang. Bergin testified that he discovered swipes of blood and brain tissue on the rear bumper. He found blood stains on the driver's seat and floor mat; however, he did not recall whether anyone submitted the blood and tissue samples to the crime lab for forensic analysis.

¶ 16 In the trunk, Bergin observed a female corpse wrapped in a comforter. The corpse suffered an apparent gunshot wound to her head. Bergin found dog toys, clothes, feminine hygiene products, a cell phone, and a wallet in the trunk. The wallet's contents included Timar's ID, credit cards, and "other assorted personal identification markers." Bergin found lead projectiles and shotgun wadding near the corpse. After Bergin's investigation, police towed Timar's Mustang to the county garage adjacent to the coroner's office.

¶ 17 Budde testified that she examined Timar's Mustang at the county garage. She saw red stains and keys on the driver's side floor. She obtained fingerprints from the cell phone Bergin found in the trunk; she did not examine the keys, wallet, or other items in the trunk for fingerprints. She found no latent fingerprints on the exterior. She took six tape lifts inside the vehicle to pick up hairs or fibers. She did not recall whether anyone submitted the fingerprints or tape lifts to the crime lab.

¶ 18 Sergeant Daniel Troike, the officer in charge of the investigation, testified that police found Timar's Mustang approximately four blocks from defendant's house. Because the fatal wound caused disturbing disfigurement to Timar's head and face, Troike did not ask Timar's family and friends at the scene to personally identify her body. Instead, they described her

distinctive tattoos, including an Aztec sun tattoo on her abdomen. Troike identified the corpse as Timar based on these descriptions.

¶ 19 C. Defendant's Blood-Stained Jacket

¶ 20 Troike also testified that he called defendant the day before Falasca found Timar's Mustang to investigate Keller and Minnick's missing person report. Based on his investigation, Troike concluded that defendant last saw or contacted Timar before her death. Troike called defendant again on January 23 after he identified Timar's corpse. Defendant agreed to meet Troike at a local gas station around 10 a.m. After meeting with Troike briefly inside the gas station, defendant agreed to answer questions at the Will County sheriff's office.

¶ 21 Prior to the interview, defendant took off his red jacket and set it on a table outside of the interview room. Troike eventually seized defendant's jacket as evidence. Deputy Rando Simeon, an evidence technician, collected the jacket from Troike.

¶ 22 Scott Westphal, defendant's neighbor, testified that he saw defendant walking toward his home from the area where police found Timar's Mustang at around 10 a.m. on January 21. Defendant wore a red jacket, jogging pants, and a brown cap. He walked with his head down and did not acknowledge Westphal. The red jacket Troike collected from defendant "looked like" the jacket defendant wore when Westphal saw him on January 21.

¶ 23 Defendant objected to the State's foundation for admitting the jacket into evidence. He claimed that Westphal's testimony did not establish that he saw defendant wearing the jacket on January 21. He also argued that the State failed to establish a sufficient chain of custody. The State never proved how the jacket went from the sheriff's office to the forensic lab or who handled the jacket after Deputy Simeon collected it.

¶ 24 D. Defendant's Mossberg Shotgun

¶ 25 Franklin Anderson testified that defendant worked part-time at Rink's Gun Store in Lockport, where he regularly purchased firearms and ammunition. Rink's receipts showed that defendant purchased a Mossberg pistol-gripped shotgun in February 2008.

¶ 26 Chester Johnson testified that he purchased defendant's Mossberg on January 21, 2009. A few days prior to January 21, defendant went to Rink's and asked about selling his shotgun on consignment. Johnson later called defendant and offered to purchase the shotgun. Defendant met Johnson in a vacant parking lot on January 21 between 3 and 5 p.m. to make the transaction. Johnson asked defendant to meet him at Rink's to complete a bill of sale later that night. Johnson wrote a bill of sale, but defendant never signed it. Rink's employees told Johnson that defendant came into the store but left before Johnson arrived. After purchasing defendant's shotgun, Johnson inspected it for damage. He noticed no stains. He then test-fired the shotgun three times; it fired properly.

¶ 27 Deputy Gary Reichenberger testified that he seized the shotgun, its case, and the bill of sale from Johnson's house on January 23. At Johnson's house, Reichenberger pulled down the sleeve covering the shotgun to inspect it. He noticed no stains on the portion of the shotgun he examined. He then gave the evidence to Sergeant Troike at the sheriff's office.

¶ 28 E. Evidence at Defendant's Home

¶ 29 At approximately 7:45 p.m. on January 23, police executed a search warrant at defendant's home. Deputy Jeffrey Jerz, an evidence technician who assisted in executing the warrant, testified that he smelled bleach in defendant's downstairs bathroom. He found empty paint cans, paint brushes, and used paint trays in defendant's house and garage.

¶ 30 Deputy Simeon also assisted in executing the warrant. He testified that he smelled fresh paint in defendant's downstairs living room and bathroom. When he processed the downstairs

bathroom, Simeon found blood on the sink pedestal and on a shelf near the light switch. Simeon collected samples of the blood for forensic analysis.

¶ 31 F. Autopsy and Forensic Evidence

¶ 32 Dr. Scott Denton performed Timar's autopsy on January 24. Although defendant claimed the State never proved the corpse's identity, defense counsel did not object when Denton stated that he performed an autopsy on Timar.

¶ 33 Denton testified that Timar suffered a shotgun wound to the back, left side of her head. He determined that the wound was a contact wound, meaning the shotgun's muzzle pressed against Timar's head when it fired. Sergeant Troike brought defendant's Mossberg to the autopsy room. Denton measured the distance from the shotgun's muzzle to its trigger—25 inches. The shotgun never came into contact with Timar's blood bodily fluids. Denton stated: "That does not happen."

¶ 34 Denton also administered a sexual assault kit on Timar. He determined that she was on her menstrual cycle when she died. He then sent the swabs from Timar's kit to the forensic lab for analysis.

¶ 35 Kelly Lawrence, a forensic scientist at the Northeastern Illinois Regional Crime Laboratory, notified the parties at trial that she submitted recreated handwritten lab notes with her Supreme Court Rule 417 disclosures. Defense counsel replied, "I knew that" and pointed out the disclosed notes were dated June 22, 2010—15 months after the State charged defendant.

¶ 36 Lawrence explained that, due to a clerical error, she could not locate the original file materials for the Rule 417 disclosures. She simply reprinted identical copies of her digitally-saved test results and lab report to disclose. However, she did not digitally save her handwritten lab notes. The notes included her initial impressions and descriptions of the evidence. Lawrence

used her notes to prepare her report; she "recreated" her misplaced notes by referring to descriptions in her report. Lawrence testified that she based her testimony and opinions on her test results and report, which she timely disclosed.

¶ 37 Lawrence's office later located the hardcopy file containing her original notes. Lawrence brought the file to trial when she testified. Defendant orally moved to exclude Lawrence's test results, report, notes, and testimony based on her failure to timely disclose the original notes pursuant to Rule 417. Before ruling, the trial court recessed so the parties could compare Lawrence's original notes to her recreated notes. The court also offered to grant defendant a continuance if necessary. After spending approximately an hour comparing Lawrence's notes, defense counsel with defendant's input rejected the court's offer to continue the proceedings. However, defendant preserved his objection and motion to exclude Lawrence's evidence and testimony; the court overruled his objection and denied his motion.

¶ 38 Lawrence testified that she analyzed defendant's red jacket, the Mossberg shotgun, blood samples collected from defendant's bathroom, and Timar's sexual assault kit. She cross-referenced the forensic evidence with samples from the corpse. Defense counsel did not object when Lawrence referred to the corpse's sample as "a known blood sample from Monica A. Timar."

¶ 39 Lawrence found three blood stains on defendant's jacket. Stain A was located in the right waist pocket, Stains B and C on the right and left side of the "zipper area." Although Lawrence could not conclude that the deoxyribonucleic acid (DNA) profiles found on the jacket belonged to Timar, she could not exclude Timar as the minor DNA profile in Stains B and C.

¶ 40 Lawrence also testified about testing on the shotgun. The shotgun arrived at the crime lab in a sealed container. Peter Striupaitis, a firearms examiner, broke the seals. Lawrence retrieved

the shotgun from the firearms section after Striupaitis examined it. Neither Striupaitis nor any other firearms section personnel testified at trial.

¶ 41 When she examined the shotgun, Lawrence found blood inside its muzzle. On cross-examination, Lawrence admitted that she did not know Johnson fired the shotgun after Timar's death. She explained that heat from firing a weapon could affect the quality of a DNA sample, but the sample she obtained a full DNA profile from the blood in the muzzle—Johnson firing the shotgun after Timar's death did not affect the sample.

¶ 42 After swabbing the presumptive blood in the shotgun's muzzle, Lawrence compared the sample to Timar's known sample. The DNA profile in the muzzle sample matched Timar's profile. The blood belonged to Timar. Using the same procedure, Lawrence determined that the blood samples Deputy Simeon collected from defendant's bathroom also belonged to Timar.

¶ 43 Lawrence found no trace of sperm in the sexual assault kit, but she found prostate-specific antigens (P30) that are typically found in seminal fluid. However, she found no male DNA. Based on the lack of male DNA, Lawrence concluded that "the P30 activity that was found in the anal swabs was more likely not from seminal fluid." She testified that she had previously found P30 activity in deceased females and explained that females can naturally produce P30, particularly while menstruating. Moreover, the DNA profile from the anal swabs matched Timar's—Lawrence found no third party DNA profiles.

¶ 44 Scott Rochowicz analyzed defendant and Timar's gunshot residue (GSR) tests. Although Rochowicz analyzed the corpse's GSR test, defense counsel did not object when Rochowicz stated he analyzed the GSR test "of an individual named Monica Timar." He testified that defendant's GSR test was negative. He found GSR particles on Timar's sample, but he deemed the results inconclusive. He explained that the GSR particles could have "originated from

discharging a firearm, being in close proximity to a firearm when it was discharged, handling a PGSR-related item, or they were deposited from [an] environmental or occupational source." Police obtained the GSR samples that Rochowicz analyzed days after Timar's family reported her missing.

¶ 45 II. Directed Verdict

¶ 46 After the State's case-in-chief, defendant moved for a directed verdict. His motion argued that the State failed to prove the *corpus delicti*. Specifically, he claimed the State presented insufficient evidence to prove police found Timar's body in her Mustang. Lawrence, Denton, and Rochowicz assumed the corpse was Timar, but the State presented no scientific evidence or witness testimony that established the corpse's identity. During the investigation, police did not obtain DNA samples from Timar's home to compare with the corpse's samples. Nor did a family member or friend visually identify the corpse as Timar.

¶ 47 The court denied defendant's motion. The court cited an autopsy photo depicting a gold heart-shaped necklace included with the corpse's personal items. Timar wore a similar necklace in a picture taken before her disappearance.

¶ 48 III. Defendant's Evidence

¶ 49 Defendant called two witnesses during his case-in-chief, Sarah Volk and Mary Volk. Sarah testified that defendant proposed to her on January 21, 2009. Several days prior, they visited North Dakota where defendant found a new job. According to Sarah, defendant painted inside the house to prepare it for sale.

¶ 50 Sarah's mother, Mary, testified that defendant and Sarah came over for dinner on January 21. They arrived at around 6:15 p.m. and left around 9 p.m. During this visit, defendant proposed to Sarah.

¶ 51 The defense rested and renewed its motion for a directed verdict, which the court denied. On June 5, 2015, the court convicted defendant on all counts. The court based its verdict on the location of Timar's body and her manner of death, Timar's blood in the shotgun and in defendant's home, and defendant selling the shotgun around the time of Timar's death.

¶ 52 At the sentencing hearing, the State presented victim impact statements. Multiple family members testified on defendant's behalf. The court sentenced him to 70 years in prison. Defendant now appeals his conviction and sentence.

¶ 53 ANALYSIS

¶ 54 Defendant makes four claims challenging his murder convictions; two claims challenge the sufficiency of the State's evidence; the other two claims challenge the admissibility of incriminating evidence. Defendant also challenges his 70-year sentence.

¶ 55 In his reply brief, defendant also claims that trial counsel provided ineffective assistance by failing to adequately preserve the issues now raised on appeal. Because defendant failed to raise these claims in his initial brief, we are not required to address them. *People v. English*, 2011 IL App (3d) 100764, ¶¶ 21-23. In any event, these claims are meritless. We now address the challenges defendant raised in his initial brief.

¶ 56 I. Sufficiency of the Evidence

¶ 57 First, defendant argues that the State presented insufficient evidence to convict him. The standard of review is " 'whether, after viewing the evidence in the light most favorable to the prosecution, *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)). We do not retry defendants, reweigh trial evidence, or otherwise undermine the fact finder's judgment. *People v. Tenney*, 205

Ill. 2d 411, 428 (2002). A conviction will stand unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant's guilt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004).

¶ 58 Defendant attacks the sufficiency of the State's evidence in two waves. First, he asserts that the State failed to prove that a crime was committed, the *corpus delicti*. He argues that the State did not prove beyond a reasonable doubt that police found Monica Timar's body in the trunk of her Mustang; nor did the State prove that criminal agency caused Timar's death. The second wave argues that the State's evidence failed to prove defendant murdered Timar.

¶ 59 A. The *Corpus Delicti*

¶ 60 In a murder case, the State must prove the *corpus delicti* by presenting evidence sufficient to show that a death occurred and criminal agency caused the death. See *People v. Lambert*, 104 Ill. 2d 375, 378 (1984) (citing 7 Wigmore, Evidence § 2072 (rev. ed. 1978)); *People v. Becerril*, 307 Ill. App. 3d 518, 526 (1999). When applicable, the State must also present evidence sufficient to identify the corpse as the victim described in the charging instrument "so that a defendant can prepare his defense and also *** avoid double jeopardy problems." *People v. Tostado*, 92 Ill. App. 3d 837, 841 (1981).

¶ 61 1. Proof of Death

¶ 62 Defendant argues that the State failed to prove Timar's death. The State offered no DNA evidence proving the corpse's identity, nor did Timar's friends or family members identify the corpse. Police could have obtained Timar's DNA samples from her home (*i.e.*, hair from a brush or saliva from a toothbrush) but failed to do so. Based on these alleged investigative oversights, the State possessed insufficient evidence to prove the corpse's identity.

¶ 63 The State argues that defendant waived this issue on appeal by failing to object each time counsel or a witness referred to the corpse as Timar. The State also claims that defense counsel invited the error or conceded the issue when he referred to the corpse as Timar several times while cross-examining the State's witnesses. Alternatively, the State argues that its evidence sufficiently proved Timar's death.

¶ 64 Even if defendant properly preserved this claim and did not invite error, the State presented sufficient evidence to prove Timar's death. The State may establish a corpse's identity by circumstantial evidence, especially "where the remains are in such a condition that personal recognition is impossible and evidence of physical characteristics such as size, height or peculiar marks or scars on the body may be the only means of identification." *People v. Gaskins*, 82 Ill. App. 3d 37, 52 (1980); see also *Tostado*, 92 Ill. App. 3d at 841.

¶ 65 Deputy Falasca testified that the Mustang in which police found the corpse was registered to Timar. Sergeant Troike testified that he identified the corpse as Timar based on her family and friends describing her distinctive tattoos at the scene where Falasca located the Mustang. The autopsy photographs depict numerous distinctive tattoos on the corpse, including an Aztec sun on her abdomen. Deputy Bergin testified that the wallet police found in Timar's Mustang contained Timar's ID, credit cards, and "other assorted personal identification markers." Minnick identified Timar in an ante-mortem picture in which she wore a heart-shaped necklace similar to the one depicted with the corpse's belongings in the autopsy room.

¶ 66 For good measure, the State's experts' unchallenged testimony directly identified the corpse as Timar. Lawrence testified that her comparator blood sample from the corpse was Timar's known blood sample. Rochowicz testified that he analyzed Timar's GSR test results. Denton testified that he performed an autopsy on Timar. The court could consider this testimony

because defense counsel failed to object. See *People v. Lewis*, 165 Ill. 2d 305, 335 (1995). The totality of the State's evidence sufficiently proved Timar's death.

¶ 67 2. Criminal Agency

¶ 68 Defendant next asserts that the evidence supports an innocent hypothesis, that Timar committed suicide. Defendant highlights Keller's third-party account of Timar stating she previously hit herself with a hammer. He emphasizes that Keller and Minnick told police Timar was suicidal when they reported her missing. He also notes Timar's job loss in November 2008, her financial difficulties, and her positive GSR test. Moreover, defendant points to missing evidence: no witness stated Timar's manner of death—Denton stated her cause of death—and no evidence indicated the shotgun's weight or Timar's arm length to prove she *could not have* committed suicide.

¶ 69 The State is not required to *disprove* every conceivable innocent hypothesis. Where circumstantial evidence sufficiently supports a conviction, the fact finder need not "be satisfied beyond a reasonable doubt as to each link in the chain of circumstances." *People v. Hall*, 194 Ill. 2d 305, 330 (2000). "It is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." *Id.* The fact finder is free to resolve disputed inferences to determine whether the accused murdered the decedent or the decedent committed suicide. *People v. Linwood*, 30 Ill. App. 3d 454, 460 (1975). "Moreover, the trier of fact is not required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *Hall*, 194 Ill. 2d at 332.

¶ 70 At trial, Keller and Minnick testified that they did not believe Timar was suicidal when they reported her missing. Rochowitz testified that Timar's GSR test, which police took days

after she went missing, did not conclusively indicate that she fired the fatal shot. During the autopsy, Denton found no signs of self-inflicted abrasions, scars, cuts, drug abuse, or other evidence to indicate Timar harmed herself.

¶ 71 Aside from direct witness testimony, the court could reasonably infer from the evidence that criminal agency caused Timar's death. Fact finders may use their "own observations and experience in life" when they evaluate evidence. Illinois Pattern Jury Instructions, Criminal No. 1.01 (4th ed. 2000). Police found Timar's corpse in the trunk of her abandoned Mustang—one could reasonably presume that people who commit suicide rarely end up in the trunk of an abandoned vehicle. The court also saw defendant's shotgun and heard Denton's testimony that Timar suffered a contact wound to the back, left side of her head. One could reasonably infer that Timar, even if she were able, did not contort her body to shoot herself in the back of the head with the shotgun; she could have utilized numerous less cumbersome means or methods to achieve the same result.

¶ 72 The totality of the evidence, viewed in the State's favor, sufficiently supported the court's determination that a criminal act caused Timar's death.

¶ 73 B. Proof of Defendant's Guilt

¶ 74 Defendant also claims that the State's evidence failed to prove that he murdered Timar. He describes the police investigation as "disorganized and compromised from start to finish." He argues that police allowed crucial evidence to become contaminated and failed to maintain adequate chains of custody. Defendant also describes the State's evidence as "woefully insufficient" to support his conviction. He claims the court improperly weighed the State's incriminating evidence and failed to properly weigh exculpatory evidence or reasonable exculpatory inferences.

¶ 75 We reiterate that we must view the evidence in the light most favorable to the State and determine whether *any* fact finder could reasonably find defendant guilty beyond a reasonable doubt. *Collins*, 106 Ill. 2d at 261. Where, as here, the trial court expresses its findings after a bench trial, we adhere to the *Collins* standards and are not bound by the court's rationale. See *People v. Cameron*, 2012 IL App (3d) 110020, ¶¶ 29-31.

¶ 76 1. Incriminating Evidence

¶ 77 The incriminating evidence sufficiently supported defendant's conviction. The evidence indicated that someone placed Timar's body in her Mustang post-mortem and abandoned the vehicle four blocks from defendant's house. Westphal testified that he saw defendant at 10 a.m. on January 21 walking toward his home from the area where police found the Mustang.

¶ 78 Additionally, Lawrence found Timar's blood in the muzzle of defendant's shotgun. Defendant attempts to discredit this evidence by claiming the shotgun became contaminated after "police brought [the shotgun] to the autopsy room *** and placed it next to a bloody corpse and bloody clothes." However, defendant's speculative argument fails to undermine Lawrence's DNA evidence, especially under the *Collins* standard where we view the evidence in the State's favor.

¶ 79 Third, defendant sold his shotgun to Johnson on January 21, the day Keller and Minnick reported Timar missing. Johnson testified that he was working at Rink's when defendant asked about selling his shotgun on consignment several days before January 21. Johnson called defendant later that night, and they agreed on a price. After the sale, which occurred in a vacant parking lot, defendant did not bother to wait for Johnson at Rink's to sign the bill of sale. Sarah Volk testified that she and defendant traveled to Bismarck, North Dakota on January 16 and 17 to look at apartments and houses with a realtor. Four days after their return, Timar's family

reported her missing, defendant sold his shotgun to Johnson, and he proposed to Sarah. The trial court could have reasonably inferred that defendant premeditated Timar's murder by arranging to sell the anticipated murder weapon and move out of state with Sarah.

¶ 80 Finally, Lawrence confirmed that police found Timar's blood in defendant's bathroom. Defendant argues that "a speck" of Timar's blood is inconsistent with her suffering a shotgun wound in defendant's bathroom. Deputies Simeon and Jerz testified that they noticed fresh paint and bleach smells when they executed the search warrant at defendant's house. Jerz found cans of paint, paint trays, and paint brushes. Laws testified that defendant asked his guests not to use the bathroom on January 22, the night before police found Timar's body. Laws also smelled fresh paint.

¶ 81 More than two days elapsed between Timar's missing person report and police searching defendant's house. Deputy Simeon found Timar's blood on the bottom of the sink pedestal near the far wall and on a shelf next to the light switch on the opposite wall, just above the switch's height. Police video demonstrated the two locations where Simeon found Timar's blood varied substantially in height and sat on opposite sides of the room. The rest of the bathroom appeared freshly painted. This evidence sufficiently proved that Timar died in defendant's bathroom.

¶ 82 2. Exculpatory Evidence

¶ 83 In addition to his claim that the State presented insufficient incriminating evidence, defendant argues that the trial court did not properly weigh two pieces of "exculpatory" evidence. He first points to evidence that showed someone used his computer the night of January 21, while he and Sarah ate dinner at Mary Volk's house. He claims this evidence could have led to exculpatory evidence—police never established Timar's time of death. He argues the

trial court should have acknowledged an exculpatory inference because police failed to further investigate the unidentified computer user.

¶ 84 This "evidence" does not merit the exculpatory inference or weight defendant seeks. Keller testified that Timar did not respond to any texts or calls all day on January 21. Westphal saw defendant walking toward his home the *morning* of January 21. Johnson purchased defendant's shotgun on January 21 *before* he and Sarah went to Mary's house. The evidence overwhelmingly suggests that Timar died several hours before someone allegedly accessed defendant's computer. Even if a fact finder derived an exculpatory inference from this supposed unidentified computer user, its weight would pale in comparison to the incriminating evidence.

¶ 85 Defendant also claims that Lawrence found male seminal fluid that did not contain defendant's DNA in Timar's sexual assault kit. He drastically mischaracterizes this evidence. Lawrence testified that she found no male DNA in the protein specific antigens (P30) present on the swabs from Timar's sexual assault kit. Based on the absence of male DNA, Lawrence concluded "the P30 activity *** was more likely not from seminal fluid." No witness testified that Timar's sexual assault kit contained male seminal fluid. The P30 activity that Lawrence found in Timar's sexual assault kit is not exculpatory evidence.

¶ 86 We hold that the totality of the evidence, viewed in the State's favor, sufficiently supported defendant's conviction.

¶ 87 II. Lawrence's Testimony and Documents

¶ 88 Defendant argues that Lawrence's disclosures violated Illinois Supreme Court Rule 417 (eff. Mar. 1, 2001) because she disclosed recreated lab notes. He claims the trial court erred by not excluding Lawrence's forensic evidence and barring her testimony as a sanction. We review a trial court's decision of whether to impose a discovery sanction for an abuse of discretion. *In*

re D.T., 212 Ill. 2d 347, 356-57 (2004); *In re K.I.*, 2016 IL App (3d) 160010, ¶ 56. Even if Lawrence's disclosures violated Rule 417, which we need not decide here, we find no abuse of discretion.

¶ 89 Discovery rules are meant to prevent surprise or unfair advantage to either party and to aid in the search for truth. *People v. Walton*, 376 Ill. App. 3d 149, 157 (2007) (citing *People v. Turner*, 367 Ill. App. 3d 490, 499 (2006)). Sanctions should be fashioned to meet the particular circumstances of each case; excluding evidence is appropriate only in the most extreme situations "because it does not contribute to the goal of truth-seeking." *Turner*, 367 Ill. App. 3d at 499; *Walton*, 376 Ill. App. 3d at 157. To choose the proper sanction, courts should consider (1) the strength of the undisclosed evidence, (2) the likelihood that prior notice could have helped discredit the evidence, and (3) the willfulness of the State's violation. *People v. Mullen*, 313 Ill. App. 3d 718, 736 (2000).

¶ 90 Although defendant argues that Lawrence's forensic findings and testimony were vital to the State's case, she did not rely on the *undisclosed* evidence (her original notes) to form her opinions. Lawrence based her opinions on her test results and report, which she timely disclosed. We do not find the strength of the undisclosed evidence merited barring Lawrence's testimony or excluding her test results and report.

¶ 91 Defendant also argues that counsel could have discredited Lawrence's opinion more effectively at trial if she timely disclosed her original notes. After reviewing the original notes for an hour at trial, defense counsel discovered several previously unknown facts, including that Sergeant Troike instructed Lawrence not to check for fingernail clippings because police found no signs of defensive wounds on Timar's body and "quality control issues with the morgue improperly handling evidence and comingling hair samples." The original notes also revealed

that Lawrence found Timar's blood inside of defendant's shotgun's muzzle rather than on its exterior. Defendant argues: "If [the original] notes had been turned over promptly it is likely more would be found."

¶ 92 We reject defendant's position for two reasons. First, the recreated notes did not surprise defense counsel at trial; he acknowledged that he knew Lawrence recreated the disclosed notes because they were dated June 22, 2010, 15 months after the State charged defendant. Second, defendant rejected the court's offered continuance.

¶ 93 As an afterthought on appeal, defendant claims that a continuance would not have cured the discovery violation because counsel prepared his trial strategy over several years. If so, counsel knew the notes were recreated when he received the Rule 417 disclosures, more than four years before trial. Also, a continuance would have allowed defendant and his counsel to examine the original notes and establish a record as to any discrepancies that warranted barring Lawrence's testimony. Instead, defendant relies on speculation. His speculative arguments do not warrant barring Lawrence's testimony or excluding her DNA evidence.

¶ 94 Finally, defendant does not argue that the State willfully violated Rule 417. At trial, defense counsel admitted the State did not willfully withhold evidence. The court noted that the prosecutor appeared just as confused as defense counsel when Lawrence stated that she disclosed recreated notes prior to trial.

¶ 95 Based on the *Mullen* factors, this case does not present extreme circumstances or an egregious discovery violation that warrants barring Lawrence's testimony or excluding her DNA evidence. Defendant declined a continuance, which would have been the proper sanction in this case. The trial court did not abuse its discretion by allowing Lawrence to testify and admitting her DNA evidence.

¶ 96 Defendant also claims that Lawrence's failure to disclose her original notes violated his due process rights; therefore, we should dismiss the charges against him. We decline to do so. Defendant mistakenly relies on *People v. Newberry*, 166 Ill. 2d 310 (1995). In *Newberry*, the court dismissed drug charges against the defendant after police destroyed the "disputed substance," on which the charges were based, before disclosure. The court found that the destroyed evidence was "essential to and determinative of the outcome of the case." *Id.* at 315. Without proving the substance's content, the State could not convict Newberry. In such a case, due process requires the court to dismiss the charges against the defendant, regardless of whether the police acted in bad faith. *Id.* at 317.

¶ 97 However, where the evidence at issue is merely "potentially useful," the prosecution's failure to preserve the evidence does not constitute a due process violation unless the defendant can show the prosecution or the police acted in bad faith. *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988). Here, the prosecution destroyed no evidence. Defendant merely speculates that defense counsel could have more effectively prepared defendant's trial strategy or cross-examined Lawrence had she timely disclosed her original notes. Neither Lawrence nor the State acted in bad faith. We find no due process violation.

¶ 98 III. Admissibility of Defendant's Shotgun and Jacket

¶ 99 Defendant next claims that the State failed to establish a sufficient chain of custody to admit defendant's shotgun and jacket. Whether to admit evidence rests in the trial court's discretion. *Tenney*, 205 Ill. 2d at 436. "Unless the defendant produces actual evidence of tampering, substitution, or contamination, the State need only establish a probability that tampering, substitution, or contamination did not occur, and any deficiencies go to the weight rather than the admissibility of the evidence." *People v. Fox*, 337 Ill. App. 3d 477, 481 (2003).

¶ 100 Defendant alleges two "major gaps" in the shotgun's chain of custody—how police transferred it from the autopsy room to the crime lab and who handled the shotgun in the crime lab. He contends that police *may have* contaminated the shotgun after Deputy Reichenberger seized it. He concedes that the shotgun's serial number matched that of the shotgun defendant purchased at Rink's in February 2008.

¶ 101 Defendant merely speculates that Timar's blood found its way into the shotgun's muzzle in the autopsy room. No testimony or evidence supports this speculation. To the contrary, Denton testified that neither he nor police allowed the shotgun to become contaminated in the autopsy room.

¶ 102 Defendant also emphasizes that neither Johnson nor Reichenberger found blood when they inspected the shotgun prior to the autopsy. However, neither witness testified that they looked for stains inside of the muzzle. Johnson testified that he did not recall noticing any stains when he checked the shotgun for defects. Reichenberger testified that he examined the shotgun at Johnson's house by pulling down its sleeve "to partially expose the weapon." He did not indicate which part of the shotgun he examined. Neither witness's testimony constitutes "actual evidence of *** contamination." *Id.* at 481.

¶ 103 The evidence sufficiently established that police did not contaminate the shotgun. See *id.* Any gaps in the chain of custody affected the shotgun's evidentiary weight, not its admissibility.

¶ 104 As with his shotgun, defendant contends that the State failed to establish an adequate chain of custody to admit his jacket into evidence. The State did not establish how the jacket arrived in Lawrence's forensic lab from the sheriff's office. However, defendant does not argue that police contaminated the jacket. The alleged chain of custody deficiency does not affect the jacket's admissibility. See *id.*

¶ 105 We hold that the trial court properly admitted defendant's shotgun and jacket into evidence.

¶ 106 IV. Defendant's Sentence

¶ 107 Finally, defendant argues that the lack of "egregious facts" in this case and his "insignificant criminal history, work history, and family and friends who supported him" render his 70-year sentence excessive. We disagree.

¶ 108 The statutory sentence for defendant's murder convictions ranges from 20 to 60 years. 720 ILCS 5/9-1(a)(1), (a)(2) (West 2014). Where, as here, the accused "personally discharged a firearm that proximately caused *** death to another person," the sentencing court may add 25 years to life. 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2014). The statutory sentence for defendant's concealment conviction ranges from two to five years. 730 ILCS 5/5-4.5-40(a) (West 2014). In sum, defendant's statutory sentence ranges from 47 years to life in prison. His sentence falls within this range.

¶ 109 "Sentencing determinations rest within the sentencing judge's discretion, and a sentence that conforms to statutory guidelines will only be overturned on appeal where that discretion has been abused." *People v. Lefler*, 2016 IL App (3d) 140293, ¶¶ 30 (citing *People v. Rogers*, 197 Ill. 2d 216, 223 (2001)). A sentence within the statutory guidelines "will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *People v. Fern*, 189 Ill. 2d 48, 54 (1999).

¶ 110 The court convicted defendant of executing Timar with a shotgun in his bathroom and concealing her body in the trunk of her Mustang. Evidence showed that defendant premeditated the murder by arranging to sell the anticipated murder weapon and move to North Dakota days

prior to Timar's death. Based on this evidence, 70 years is neither "at variance with the spirit and purpose of the law" nor disproportionate to defendant's offenses. We affirm his sentence.

¶ 111 CONCLUSION

¶ 112 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 113 Affirmed.