2019 IL App (1st) 160462-U

No. 1-16-0462

February 25, 2019

First 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. 13 CR 17989
	)	
GUMARO TORRES,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WALKER delivered the judgment of the court.
Presiding Justice Mikva and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions for first degree murder, attempt first degree murder and aggravated battery are affirmed over his contentions that the State failed to prove him guilty beyond a reasonable doubt of attempt first degree murder and aggravated battery. Defendant's combined sentence of 105 years' imprisonment is affirmed over his contention that his sentence is excessive in light of certain mitigating factors.

¶ 2 Following a bench trial, defendant Gumaro Torres was convicted of the first degree murder of Jose De La Fuente (720 ILCS 5/9-1(a) (West 2012)), attempt first degree murder of

Abraham Valentin (720 ILCS 5/8-4(a) and 5/9-1(a) (West 2012)), and aggravated battery of Isabel Valentin (720 ILCS 5/12-3.05 (West 2012)). He was sentenced to a combined total of 105 years' imprisonment: 30 years for the first degree murder plus a 25-year enhancement (730 ILCS 5/5.4.5-20(a); 730 ILCS 5/5-8-1(d)(iii)(West 2012)); 20 years for attempt murder plus a 25-year enhancement (730 ILCS 5/5-4.5-25(a); 730 ILCS 5/5-8-1(d)(iii) (West 2012)); and five years for aggravated battery (730 ILCS 5/5-4.5-40(a)(West 2012)), with all sentences to be served consecutively. On appeal, defendant contends that his: (1) conviction for attempt murder should be reduced to aggravated battery with a firearm because the State failed to prove beyond a reasonable doubt that he intended to kill Abraham; (2) conviction for aggravated battery should be reduced to simple battery because the State failed to prove beyond a reasonable doubt that the gun he used to hit Isabel constituted a deadly weapon and that Isabel suffered great bodily harm or disfigurement; and (3) sentence is excessive in light of the mitigation evidence presented. [1] We affirm.

¶ 3 BACKGROUND

¶ 4 Defendant was charged by indictment with 33 counts of first degree murder; (720 ILCS 5/9-1(a) (West 2012)); five counts of attempt first degree murder (720 ILCS 5/8-4(a), 9-1(a) (West 2012)); and four counts of aggravated battery (720 ILCS 5/12-3.05 (West 2012)), stemming from an incident that occurred on August 16, 2013, in the vicinity of the 1800 block of North Pulaski Road. Prior to trial, defendant informed the State that he would be raising the affirmative defense of self-defense.

[1] Because Abraham and Isabel share a last name, we refer to them by their first names.

¶ 5 Abraham Valentin (Abraham) testified that on August 16, 2013, about 2 p.m., he played soccer and drank beer with his brother Isabel Valentin (Isabel) and their friend Jose De La Fuente (De La Fuente). About three hours later, the trio went to their friend Roman Leonardo's (Leonardo) house on the 1800 block of North Pulaski.[2] When Abraham, Isabel, and De La Fuente arrived there, defendant, who lived two houses away, was standing in front of Leonardo's house. Abraham testified that he considered defendant to be a friend and they would get together once a week to drink alcohol and play soccer. Leonardo, who was accompanied by Roman Arias (Arias), opened the gate to his yard and let the group inside. Abraham and De La Fuente went into Leonardo's pool while defendant, Isabel, Leonardo and Arias talked by the picnic bench in the yard.

¶ 6 At some point in the evening, Abraham and De La Fuente went to a liquor store to purchase beer. They returned about "10 or 15 minutes" later and Leonardo again opened the gate and let them inside the yard. Abraham placed the beer on the picnic table and saw defendant talking on his phone. Defendant left the yard, but returned a short time later. When he returned, someone gave defendant a beer. Abraham, who was about six feet away from defendant, saw a flash coming from defendant's hand, heard a gunshot, and saw De La Fuente fall to the ground. Abraham, who was standing between De La Fuente and defendant, "tried to stop" defendant, but defendant shot him. Abraham fell to the ground, heard people screaming and lost consciousness.

¶ 7 Abraham woke up in the hospital several months later. He described the extent of his injuries in detail. Abraham was shot in the abdomen, his right leg and his left hand. As a result of the shooting, he spent two and a half to three months in the hospital and had about ten

[2] Roman Leonardo is also known as Romeo Leonardo.

surgeries. He had a breathing tube inserted in his throat and has multiple scars, including a 12 to 18 inch scar on the center of his chest and a ten inch by four inch scar on his lower right leg. At the time of his testimony, Abraham was just beginning to walk again with the aid of a cane, having been confined to a wheelchair since the shooting. Abraham was able to return to work part-time, but can only lift ten pounds or less. Abraham testified he is "traumatized and cannot do [his] life as before."

¶ 8 Isabel testified to a substantially similar sequence of events as his brother Abraham. Isabel added that he saw defendant leave Leonardo's yard and return after several minutes. Defendant was given a beer upon his return. Isabel then saw defendant shoot De La Fuente. Abraham tried to grab defendant, but defendant shot him. Isabel then ran to defendant and grabbed him so that "he would not escape." Isabel got on top of defendant, who tried to shoot him "but the bullets didn't go." Defendant hit Isabel in the forehead and cheek with the gun five to six times causing him to bleed. Defendant asked Isabel to let him go. Isabel received treatment from the paramedics at the scene but asked them to "check on the people who were hurt like my brother and [De La Fuente]." Isabel identified a photo that showed his injuries. Isabel testified he still has the scars from the incident and displayed them for the court. Isabel testified that no one in the yard was yelling or fighting before defendant started shooting. On cross-examination, Isabel acknowledged he had cuts on his hands as a result of trying to prevent defendant from escaping.

¶ 9 Leonardo testified to a substantially similar sequence of events as Abraham and Isabel. Leonardo added that, on the date of the shooting, he resided in a house on the 1800 block of North Pulaski with his mother, sister, brother, niece and nephew. Leonardo described the house

as having a "pretty big" vacant lot next to the house where cars can be parked. There is a fence and a gate in front of the lot that he keeps locked. In the backyard of the house, there is a pool and a picnic table. Defendant resided two houses north of Leonardo. Prior to the shooting, Leonardo had known defendant for three or four years. Leonardo explained that defendant would come over "once in a while" to drink beer in his yard. Leonardo knew Abraham and Isabel, but was not familiar with De La Fuente. On the date of the shooting, Leonardo's friend Ramon Arias was also at the house.

¶ 10 About 9 p.m., Abraham, Isabel, De La Fuente and defendant arrived at Leonardo's house, and began drinking beer. Abraham and De La Fuente jumped into the pool while defendant talked with Isabel. At some point in the evening, Abraham and De La Fuente left the house to purchase more beer. When they returned, Leonardo opened the gate for them. Leonardo came back into the yard and noticed that defendant was no longer there. A short time later, Leonardo saw defendant walking from his house and opened the gate for him. Defendant walked to the picnic table. As Leonardo was walking back into the yard, he saw defendant take something out of his waist "real fast and point it at [De La Fuente]." Defendant and De La Fuente both "mumbled" something, and Leonardo heard a loud noise and saw flames coming from defendant's hands. De La Fuente fell to the ground. As Abraham tried to reach defendant, Leonardo heard five to six more shots and saw Abraham fall to the ground. Isabel then ran towards defendant, who hit Isabel in the head with the gun four to five times. Isabel grabbed defendant, knocked him to the ground and held him down. Leonardo went into his house and called for an ambulance. Leonardo did not hear anyone arguing or fighting with defendant before the shooting.

¶ 11 Carlos Avalos (Avalos) testified that in August of 2013, he resided on the 1800 block of North Pulaski, on the second floor of an apartment building that is "down the street" from Leonardo's house. Defendant was Avalos's neighbor and lived on the third floor of the same building. Defendant resided with his two daughters, Kelly and Brenda. Prior to the shooting, Avalos had known defendant for four or five years. On the date of the shooting, at approximately 10:30 p.m., Avalos was on the front porch of his building talking with defendant's daughter Brenda. Avalos saw defendant walking from Leonardo's house and heading toward his apartment. As defendant walked up to the building, he appeared "angry and aggravated." Avalos asked defendant, in Spanish, how he was doing. Defendant replied, in Spanish, "f*** you get the hell out of here." Defendant then went up into his apartment.

¶ 12 About 10 to 15 minutes later, defendant left his apartment and returned to Leonardo's house. Avalos remained on the porch talking to Brenda. About ten minutes later, Avalos heard what he initially believed to be fireworks, but realized was gunfire, coming from Leonardo's yard. Avalos took Brenda into his apartment and locked the door. Avalos left the apartment and walked over to Leonardo's yard where he saw defendant on the ground with another person on top of him. He also saw another man motionless on the ground. Avalos was on the porch for five hours prior to the shooting and never heard yelling, screaming or fighting from Leonardo's yard.

¶ 13 Chicago police officers Ryan Delaney (Delaney) and Sergio Corona (Corona) responded to a call of a person shot in the vicinity of 1800 North Pulaski. When Delaney and Corona arrived on the scene, Leonardo was standing in front of his house, a family residence with a fenced in lot adjacent to the building. Leonardo opened the gate and Delaney and Corona entered the yard. There, the officers observed defendant on the ground "mumbling in Spanish" and Isabel

on top of him "panicked and injured." Isabel had lacerations and blood on his face and appeared to be crying. De La Fuente and Abraham were lying on the ground motionless, bleeding, and unresponsive. There was also a handgun on the ground. The gun had blood on the slide and frame. Delaney called for medical assistance and handcuffed defendant. Several ambulances arrived and although defendant appeared to be bloodied, he refused medical treatment.

¶ 14 Chicago police officer Michael Burke (Burke) arrived on the scene and stood by the handgun. Burke noticed the handgun's magazine was protruding slightly and testified that based on his experience with firearms, the magazine in this position would not allow the handgun to discharge a bullet. The handgun was turned over to Amy Campbell (Campbell), an evidence technician, who photographed the scene and collected evidence. Campbell found one expended cartridge lodged in the handgun, two live rounds in the magazine, and five expended shell casings on the ground. Analysis of the blood from the handgun matched Isabel's DNA profile.

¶ 15 Chicago fire department paramedic Juan Galvez (Galvez) arrived at the scene and began treating De La Fuente for his injuries. Galvez started an IV (intravenous fluids) and began administering oxygen. De La Fuente was placed on a spinal board and was suffering from one gunshot wound to his upper abdomen. Galvez transported De La Fuente to Mount Sinai Hospital where he succumbed to his injuries. Doctor James Filkins, a medical examiner with the Cook County Medical Examiner's Office, concluded that De La Fuente died from a single gunshot wound to his upper right abdomen.

¶ 16 Chicago fire department paramedic Julie Rinaldi (Rinaldi) arrived and began treating Abraham for his injuries. Rinaldi started oxygen, a heart monitor, and IV. Abraham was conscious and alert. He had multiple gunshot wounds, including one to his right lower quadrant,

right thigh, left hip, and the palm of his left hand. Abraham was transported to Illinois Masonic Hospital.

¶ 17 Doctor Juan Santiago-Gonzalez (Santiago-Gonzalez), a trauma surgeon, testified that when Abraham arrived at the hospital he was in "extreme critical condition" and was at "red level," a maximum alert for a trauma patient. Santiago-Gonzalez recounted the extent of Abraham's injuries. He explained that the gunshot wound to Abraham's abdomen and leg were "life threatening" and needed immediate intervention. Abraham had multiple injuries to his small and large intestines and an injury to his right leg that was compromising the circulation to the leg. He was in a medically induced coma for two or three weeks to allow him to "handle all the injuries." Over a period of three months, Santiago-Gonzalez performed ten surgeries on Abraham and had to leave his abdomen "open for weeks." Santiago-Gonzalez opined that Abraham would have died from his injuries if he did not undergo surgery and the only injury that was not life threatening was the gunshot wound to his hand.

¶ 18 Delaney and Corona transported defendant to the police station. Campbell arrived at the station a short time later and administered a gunshot residue test (GSR) to both of defendant's hands. The results of the GSR were positive for lead, barium, and antimony, indicating that defendant discharged a firearm. Campbell testified defendant's mouth was bloody and he had scratches to his face. After a series of stipulations, the State rested. Defendant's motion for a directed finding was denied.

¶ 19 The court found defendant guilty of the charged offenses. In announcing its ruling, the court noted that "there is nothing to suggest that the defendant was defending himself from the aggression of those others in the yard. There is nothing to suggest self defense at all." In finding

defendant guilty of attempt first degree murder, the court stated that defendant, while armed with a firearm, took a substantial step towards the commission of first degree murder by personally discharging the firearm, causing permanent damage and disability and disfigurement to Abraham. As to the charge of aggravated battery of Isabel, the court found that defendant knowingly caused permanent disfigurement to Isabel when he struck him with the gun, which was a deadly weapon.

¶ 20 Defendant's motion for a new trial was denied and the case proceeded to sentencing. At sentencing, the court heard arguments in aggravation and mitigation**.** In aggravation, the State presented victim impact statements from Abraham and Isabel, recounting how their lives changed after the shooting. In asking for a significant sentence, the State highlighted the injuries suffered by the victims, the fact that defendant had a conviction for aggravated driving under the influence of alcohol from 2009 and was on probation for felony driving while his license was revoked at the time of the crime, and that a lengthy sentence was necessary to deter others from committing the same crime.

¶ 21 In mitigation, defendant presented testimony from his daughter Brenda, who expressed her love for him and testified that her older sister would have also been present to testify but was giving birth. Defense counsel asked for a reasonable sentence.

¶ 22 In announcing sentence, the court stated:

> "[F]or the purposes of sentencing, the court has considered the evidence at trial, the gravity of the offense, the presentence investigation report, the financial impact of incarceration, all evidence, information and testimony in aggravation and mitigation, any substance abuse issues and treatment, the potential for rehabilitation, the possibility of

> sentencing alternatives, the victim impact statement and all hearsay presented and deemed relevant and reliable."

With respect to first degree murder, the court sentenced defendant on count 11—with counts 1 through 10 and 12 through 33 merging therein—to a term of 30 years, plus a 25-year enhancement. For attempt first degree murder, the court sentenced defendant on count 36—with counts 34, 35, 37, 38 and 39 merging therein—to a term of 20 years, plus a 25-year enhancement. For aggravated battery, the court sentenced defendant on count 42—with counts 40 and 41 merging therein—to a term of 5 years. The court ordered all sentences to be served consecutively for a combined total of 105 years' imprisonment. Defendant's motion for reconsideration of his sentence was denied.

¶ 23 ANALYSIS

¶ 24 On appeal, defendant first challenges the sufficiency of the evidence to sustain his attempt first degree murder and aggravated battery convictions.

¶ 25 The standard of review on a challenge to the sufficiency of the evidence 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. *People v. Wheeler,* 226 Ill. 2d 92, 114 (2007). This standard is applicable in all criminal cases whether the evidence is direct or circumstantial. *People v. Herring,* 324 Ill.App.3d 458, 460 (2001); *People v. Campbell,* 146 Ill. 2d 363, 374-75 (1992). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Hutchinson,* 2013 IL App (1st) 102332, ¶ 27; *People v. Ortiz,* 196 Ill. 2d 236, 259 (2001). When considering the sufficiency of the evidence, it is not the reviewing court's

duty to retry the defendant. *People v. Beauchamp,* 241 Ill. 2d 1, 8 (2011); *People v. Collins,* 106 Ill. 2d 237, 261 (1985). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). A reviewing court will only reverse a criminal conviction when the evidence is so improbable or unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *Beauchamp,* 241 Ill. 2d at 8; *People v. Collins,* 214 Ill. 2d 206, 217 (2005).

¶ 26 In this case, defendant was found guilty of attempt first degree murder. In order to sustain defendant's conviction, the State was required to prove beyond a reasonable doubt that he (1) performed an act constituting a substantial step toward the commission of murder, and (2) possessed the criminal intent to kill the victim. *People v. Petermon,* 2014 IL App (1st) 113536, ¶ 39; 720 ILCS 5/8-4 (West 2013); and 720 ILCS 5/9-1(a)(1)(West 2013).

¶ 27 Defendant solely challenges the element of intent. Specifically, he argues that his conviction for attempt murder should be reduced to aggravated battery with a firearm because the State failed to prove beyond a reasonable doubt that he intended to kill Abraham.

¶ 28 The issue of whether a defendant had the specific intent to kill is a question of fact to be determined by the trier of fact. *People v. Valentin,* 347 Ill. App. 3d 946, 951 (2010). Because intent can seldom be proved by direct evidence, the trier of fact may infer intent from the acts committed and the surrounding circumstances. *People v. Glazier,* 2015 IL App (5th) 120401, ¶ 15; *People v. Thomas,* 60 Ill. App. 3d 673, 676 (1978). Intent to kill may be established by proof of surrounding circumstances, including the use of a deadly weapon. *Petermon,* 2014 IL App (1st) 113536, ¶ 39. Such intent may be proven where the defendant fired a gun at or towards another person with malice or with a total disregard for human life. *Id.* We have found that "[t]he

very act of firing a gun at a person supports the conclusion that the person doing so acted with an intent to kill." *People v. Ephraim,* 323 Ill. App. 3d 1097, 1110 (2001). Courts have also considered the number of shots, range, and the general target area in assessing intent. *People v. Bryant,* 123 Ill. App. 3d 266, 274 (1984).

¶ 29 After viewing the evidence in the light most favorable to the State, we find that a rational trier of fact could have concluded that defendant intended to kill Abraham. The record shows that Abraham and his friends, including defendant, were drinking beer in the back yard. There was no evidence presented that anyone was arguing with defendant or threatening him. At some point, defendant left the yard, went to his home, and returned a short time later. Shortly thereafter, defendant withdrew a handgun and fired one shot that struck De La Fuente in the abdomen killing him. As Abraham began moving towards defendant, he turned his gun on Abraham and fired four shots striking Abraham in the abdomen, leg, and hand. See *Petermon*, 2014 IL App (1st) 113536, ¶ 39, 44 (intent to kill may be established by proof of surrounding circumstances, including the use of a deadly weapon and the defendant firing multiple shots at the victim). As a result of the shooting, Abraham sustained life-threatening injuries, was hospitalized for almost three months, and required over ten surgeries. See *Ephraim*, 323 Ill. App. 3d at 1110 (intent to kill may be proven where the surrounding circumstances show that the defendant fired a gun at another person with either malice or a total disregard for human life). Here, given that defendant, immediately after he shot and killed De La Fuente, shot Abraham multiple times from close range, the evidence was sufficient for the trial court to infer that defendant had the intent to kill Abraham, and to sustain his conviction for attempt first degree murder.

¶ 30 Defendant argues that he did not intend to kill Abraham, but only to shoot him because Abraham attempted to disarm him. Defendant offers the placement of the shots being low on Abraham's body as evidence that he shot Abraham only after a struggle over the gun. Defendant also maintains that he "had ample opportunity to kill, not only [De La Fuente], but also Abraham and Isabel if that was his intention. The testimony at trial suggested that all those present at Leonardo's house were unsuspecting vulnerable targets."

¶ 31 Initially, we note there was no evidence presented that Abraham and defendant were engaged in a struggle over the handgun. Rather, Abraham testified that after defendant shot De La Fuente, he "tried to stop" defendant, but defendant started shooting at him. Isabel testified that after defendant shot De La Fuente, Abraham tried to grab defendant, but defendant shot him. Secondly, even if defendant shot Abraham during a struggle for the gun, this court would not disturb the trial court's finding of intent to kill where defendant, after having shot and killed De La Fuente, fired multiple shots at Abraham. See *People v. Stanford,* 2011 IL App (2d) 090420, ¶ 41 (the fact that defendant fired a gun a single time is sufficient to infer intent to kill). Lastly, regarding the placement of the gunshots, poor marksmanship is not a defense to attempted murder. *People v. Teague,* 2013 IL App (1st) 110349, ¶ 27.

¶ 32 Defendant also argues that the State was required to prove his motive for shooting Abraham. This court has previously held that the State is not required to show motive to sustain a conviction for attempt murder. *People v. Furdge,* 332 Ill. App. 3d 1019, 1023 (2003).

¶ 33 Defendant next challenges the sufficiency of the evidence to sustain his aggravated battery conviction. Specifically, he contends that his conviction for aggravated battery should be reduced to simple battery because the State failed to prove beyond a reasonable doubt that: (1)

the gun he used to hit Isabel constituted a deadly weapon; and (2) Isabel suffered great bodily harm or disfigurement.

¶ 34 In this case, defendant was found guilty of the aggravated battery of Isabel. To sustain this conviction, the State was required to prove that defendant, while committing a battery, used a deadly weapon. 720 ILCS 5/12-3.05(f)(1) (West 2012). Defendant does not challenge the proof to establish his guilt of battery. Rather, he first argues that the evidence presented was insufficient to prove that he used a deadly weapon.

¶ 35 A deadly weapon is an instrument capable of producing death (*People v. Blanks*, 361 Ill. App. 3d 400, 411 (2005)) or great bodily injury (People v. Stanley, 369 Ill. App. 3d 441, 445 (2006)). A bludgeon may be considered a deadly weapon. *People v. Ross*, 229 Ill. 2d 255, 275 (2008) (citing *People v. Skelton*, 83 Ill. 2d 58, 64-66. (1980)). "When the character of the weapon is doubtful or the question depends on the manner of its use, it is a question for the fact finder to determine from a description of the weapon, the manner of its use and the circumstances of the case." *Blanks*, 361 Ill. App. at 411-12.

¶ 36 Here, we find that the evidence, viewed in the light most favorable to the State, was sufficient for the trial court to determine that defendant was armed with a deadly weapon. The record shows that when defendant returned to the yard he brandished a handgun and fired one shot at De La Fuente killing him. Defendant then shot Abraham multiple times, causing life threatening injuries. Isabel grabbed defendant, who, in an attempt to break free, struck Isabel in the head and face with the gun several times. As a result of being hit with the gun, Isabel sustained cuts and scars on his face, which he displayed for the court. Given the circumstances of

the case and the manner in which defendant used the gun, the trial court did not err in finding the gun constituted a deadly weapon.

¶ 37 Defendant argues that the gun was too small to be effectively used as a bludgeon or club. In setting forth this argument, defendant concedes there was no testimony regarding the weight or composition of the gun. However, as mentioned, when character of the weapon is doubtful, it is a question for the fact finder to determine from a description of the weapon and the manner of its use. Here, the trial court heard the testimony regarding the circumstances of the case and the manner in which defendant used the gun to strike Isabel. See *People v. Deskin,* 60 Ill. App. 3d 476, 481 (1978) ("Although a gun, if fired, is generally considered a deadly weapon *per se,* when it is used as a club it may also be considered a deadly weapon."). Moreover, the court had the opportunity to view the gun and photographs of the gun as it was introduced into evidence. As such, we will not substitute our judgment for that of the trier of fact on this matter. *People v. Hutchinson,* 2013 IL App (1st) 102332 ¶ 27; *People v. Ortiz,* 196 Ill. 2d 236, 259 (2001).

¶ 38 Defendant next contends that the State failed to prove him guilty of aggravated battery because it did not prove beyond a reasonable doubt that Isabel suffered great bodily harm or permanent disfigurement.

¶ 39 We first address defendant's contention that the State failed to prove he caused great bodily harm to Isabel because the State failed to produce evidence of the severity of Isabel's injuries.

¶ 40 A person commits aggravated battery when he, in committing a battery, intentionally or knowingly causes great bodily harm, (720 ILCS 5/12-3.05 (f)(1) (West 2012)). The element of great bodily harm does not have a legal definition, rather, "great bodily harm" requires that the

injury be of a greater and more serious nature than one suffered as the result of a battery. *People v. Figures*, 216 Ill. App. 3d 398, 401 (1991). Battery is defined as "some sort of physical pain or damage to the body, like lacerations, bruises, or abrasions." *People v. Mays*, 91 Ill. 2d 251, 256 (1982). Whether an injury rises to the level of great bodily harm is a question for the trier of fact. *People v. Cisneros*, 2013 IL App (3d) 110851, ¶ 12. Thus, "the relevant question for the trier of fact to answer is not what the victim did or did not do to treat the injury but what injuries the victim in fact received." *People v. Edwards*, 304 Ill. App. 3d 250, 254 (1999).

¶ 41 Here, we find that the evidence, viewed in the light most favorable to the State, was sufficient for a rational trier of fact to conclude that Isabel's injuries were greater and of a more serious nature than those of a simple battery. See *Figures*, 216 Ill. App. 3d at 401. The evidence at trial established that defendant tried to fire his handgun at Isabel and when it malfunctioned, he instead hit Isabel five or six times in the face and head with the gun causing cuts and bleeding. The evidence further established that Isabel's wounds were still visible almost two years after the altercation. Therefore, the trial court did not err in finding that Isabel suffered great bodily harm.

¶ 42 Defendant next argues that the State failed to prove permanent disfigurement because there was no testimony regarding the injuries being permanent.

¶ 43 A person commits aggravated battery when he, in committing a battery, intentionally or knowingly causes permanent disfigurement. (720 ILCS 5/12-3.05(a)(1) (West 2012)). Disfigurement is defined as that which "impairs or injures the beauty, symmetry, or appearance of a person or thing; that which renders unsightly, misshapen, or imperfect, or deforms in some manner." *People v. Woods*, 173 Ill. App. 3d 244, 249 (1988) (quoting Black's Law Dictionary 420 (5th ed. 1979)).

¶ 44 Here, the evidence presented at trial sufficiently supports the trial court's finding that defendant, in striking Isabel on the head and face with a handgun caused permanent disfigurement with the injuries suffered still visible almost two years later. See *People v. Newton*, 7 Ill. App. 3d 445, 447 (1972) (A rational trier of fact could conclude that the victim suffered permanent disfigurement where the victim went to a doctor's office to receive six stitches for a wound in his head, and at trial five months later, he indicated that the wound left a small scar which was covered by hair.) Viewing the evidence in the light most favorable to the State, a rational trier of fact could conclude that defendant caused Isabel to suffer permanent disfigurement.

¶ 45 Lastly, defendant contends that his 105-year sentence is excessive because the court failed to consider certain mitigating factors. Specifically, he argues that the court failed to consider his background, family ties, minimal contact with the criminal justice system, and his rehabilitative potential.

¶ 46 A reviewing court will only reverse a sentence when it has been demonstrated that the trial court abused its discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). A trial court has discretionary powers in imposing a sentence because it has a superior opportunity "to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). Absent some indication to the contrary, other than the sentence itself, we presume the trial court properly considered all relevant mitigating factors presented. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19.

¶ 47 In reviewing a defendant's sentence, this court will not reweigh these factors and substitute its judgment for that of the trial court merely because it would have weighed these factors differently. *People* v. *Busse*, 2016 IL App (1st) 142941, ¶ 20. Moreover, a sentence which falls within the statutory range is presumed to be proper and " '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. Brown*, 2015 IL App (1st) 130048, ¶ 42 (quoting *People v. Fern*, 189 Ill. 2d 48, 54 (1999)).

¶ 48 Defendant's first degree murder conviction has a sentencing range of 20 to 60 years' imprisonment. 730 ILCS 5/5-4.5-20 (West 2012). Since defendant personally discharged a firearm proximately causing the death of the victim, defendant was eligible for a term of 25 years up to natural life to be added to the term of imprisonment imposed by the court on the murder conviction. 730 ILCS 5/5-8-1(d)(iii) (West 2012). Defendant's conviction for attempt first degree murder is a Class X offense and has a sentencing range of 6 to 30 years' imprisonment. 730 ILCS 5/5-4.5-25 (West 2012). However, since defendant personally discharged a firearm, 25 years shall be added to the sentence. 720 ILCS 5/8-4 (c)(1)(D) (West 2012). Defendant's conviction for aggravated battery is a Class 3 offense and has a sentencing range of two to five years' imprisonment. 730 ILCS 5/5-4.5-40 (West 2012). Given that defendant was convicted of first degree murder and inflicted severe bodily injury, his sentences were required to be consecutive. 730 ILCS 5/5-8-4(d)(1) (West 2012).

¶ 49 Thus, with respect to his convictions for first degree murder, attempt first degree murder, and aggravated battery, defendant faced a total possible combined sentence ranging from 79 years to natural life. Because defendant's sentence for each offense is within the permissible

statutory range, it is presumed proper. *Sauseda*, 2016 IL App (1st) 140134, ¶ 19. "To rebut this presumption, defendant must make an affirmative showing that the sentencing court did not consider the relevant factors." *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38. Defendant has failed to make such a showing.

¶ 50 Defendant does not dispute that his sentence falls within the applicable sentencing range. Rather, he argues that the trial court abused its discretion in sentencing him to a combined term of 105 years' imprisonment in light of his: non-violent background; minimal contact with the criminal justice system; involvement with his children and family; consistent employment history; and his rehabilitative potential. He requests this court reduce his sentence to a more appropriate term of years or remand the matter for a new sentencing hearing.

¶ 51 We initially note that, in setting forth his argument, defendant treats his combined 105-year-term as a single sentence and, essentially, requests that this court consider his sentences in the aggregate. Although defendant was sentenced to a combined total of 105 years' imprisonment, that total was comprised of a 55-year sentence for the first degree murder, a 45-year sentence for attempt first degree murder, and a 5-year sentence for aggravated battery to run consecutively. Our supreme court has "long held that consecutive sentences constitute separate sentences for each crime of which a defendant has been convicted." *People v. Carney*, 196 Ill. 2d 518, 529 (2001). Therefore, in considering defendant's argument that his sentences were excessive, we should more properly be focused on the propriety of each individual sentence.

¶ 52 Whether viewed individually or combined, we find that the trial court did not abuse its discretion in sentencing defendant. Contrary to defendant's argument, the record shows that the mitigation evidence was presented to the trial court before it imposed its sentence. We presume

that the trial court properly considered all mitigation evidence. *Sauseda,* 2016 IL App (1st) 140134, ¶ 19. While a defendant's potential for rehabilitation must be considered, the trial court is not required to give more weight to a defendant's chance of rehabilitation than to the nature of the crime (*People v. Evans,* 373 Ill. App. 3d 948, 968 (2007)). The sentencing court is not required to give greater weight to mitigating factors than to the seriousness of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *People v. Harmon,* 2015 IL App (1st) 122345, ¶ 123.

¶ 53 Here, the record shows that in imposing sentence, the trial court considered the factors in aggravation and mitigation, and ultimately determined that the seriousness of the offense outweighed the mitigating factors and warranted a combined sentence of 105 years' imprisonment. At sentencing, the court was presented with defendant's PSI report, which included his age and criminal history. Defense counsel emphasized defendant's family history and lack of violent background. Counsel also emphasized defendant's work history. Defense counsel presented defendant's daughter to testify regarding her love for her father and his importance to the family. In imposing sentence, the court expressly stated that it had considered the PSI report, the financial impact of incarceration, defendant's potential for rehabilitation, and the information and testimony in mitigation. However, the court also considered the seriousness of the offense. See *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55 (because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors, and the presence of such factors does not require a minimum sentence or preclude the imposition of a maximum sentence). As a result, defendant cannot show that the

court failed to consider the mitigating factors in question and abused its discretion in imposing a total combined sentence of 105 years' imprisonment.

¶ 54 CONCLUSION

¶ 55 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 56 Affirmed.