2019 IL App (1st) 161225-U

No. 1-16-1225

Order filed June 28, 2019

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. 13 CR 18864
	)	
OLIVER SPANN,	)	Honorable
	)	Thaddeus L. Wilson,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Lampkin concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's conviction for first degree murder is affirmed where he did not show by a preponderance of the evidence that a mitigating factor existed to reduce his conviction to second degree murder. The defendant's 28-year sentence was not excessive. We remand so that the defendant may raise alleged errors in the imposition of fines, fees, and costs pursuant to Illinois Supreme Court Rule 472(e) (eff. May 17, 2019).

¶ 2 Following a jury trial, the defendant, Oliver Spann, was convicted of first degree murder (720 ILCS 5/9-1(a)(1) (West 2012)) and sentenced to 28 years' imprisonment. On appeal, the

defendant argues that: (1) his conviction should be reduced to second degree murder because the evidence showed that, either, his actions were based on a sudden and intense passion resulting from a serious provocation by the victim or he unreasonably believed that he needed to defend himself; (2) his sentence was excessive in light of certain mitigating factors; and (3) the fines, fees, and costs assessed against him should be reduced. We affirm the defendant's conviction and sentence and remand to the trial court to allow the defendant to raise alleged errors regarding his fines, fees, and costs.

¶ 3 The defendant was arrested and charged by indictment with two counts of first degree murder for the stabbing death of Elvis Canfield. Prior to trial, the defendant informed the State that he would be raising the affirmative defense of self-defense. The case proceeded to a jury trial at which the following evidence was adduced.

¶ 4 Nakeema Hodges testified that she has five children, two of which are the children of the defendant. She dated the defendant from 2007 until June 2013 when she ended the relationship. Prior to the end of their relationship, they moved from an apartment on the 700 block of North Trumbull Avenue to an apartment near the intersection of Springfield Avenue and Thomas Street. She allowed the defendant to stay with her after the breakup. She then started dating Canfield, who was also known as "Pookie" and lived on the 1100 block of Pulaski Road. Hodges stated that, after she ended her relationship with the defendant, he followed her everywhere she went.

¶ 5 Hodges testified that, on the night of August 27, 2013, she was drinking beer with Canfield and her best friend, Olen Hurt, in front of an apartment building near the intersection of Springfield and Division Street. She stated that the defendant was also present, just outside of the

group, and he was trying to "conduct conversation with us, get into our conversations," but the group ignored him. She asked the defendant to leave a couple of times but he would not. The defendant was wearing black pants, a maroon shirt, and a hat. At some point, Hurt left to go buy cigarettes with money that Canfield had given him. When Hurt returned, the defendant asked him for a cigarette, but Hurt said they were not his to give. After Hurt gave Canfield a cigarette, the defendant became angry and "stormed off," walking southbound in the direction of Hodges' apartment. Soon after, Canfield left the area and walked westbound on Division towards Pulaski, the direction of his residence.

¶ 6 Hodges testified that, shortly after midnight, she observed the defendant riding a silver and black bicycle "real fast" in the direction Canfield had walked just a few minutes earlier. The defendant was still wearing the same clothes. The defendant rode past her and Hurt and turned the corner towards Pulaski. She screamed out "Pookie" because she realized the defendant was following Canfield, and she ran after them. When she turned onto Division, she saw the defendant get off his bicycle, drop it to the ground, and walk towards Canfield in the middle of the street. After the defendant approached Canfield, the two began to wrestle with each other and the defendant slammed Canfield to the ground. Hodges testified that the defendant initiated the contact with Canfield. She explained that, when the pair was on the ground it seemed like the defendant was punching Canfield, but, as she moved closer, she saw that Canfield was bleeding and the defendant was holding a knife in his hand. She recognized the knife as one from her kitchen set at home, which the defendant always carried with him. She pushed the defendant off of Canfield and heard him say to Canfield "now, bitch." She observed that Canfield was bleeding from his stomach or chest area. Canfield stood up, stumbled towards the sidewalk, and collapsed

against an apartment building. She called to Hurt, who had followed her, for help. The defendant rode away on his bicycle in the direction he came from.

¶ 7 According to Hodges, the police arrived, and she identified the defendant and told them what she observed that night. The police showed her two hats and a shoe that were found near the scene. She identified one hat as belonging to Canfield and the other hat, which was black and yellow, and the shoe, as belonging to the defendant. Hodges testified that she never saw or spoke to the defendant following this incident. On August 29, 2013, she and Hurt were in the same area and she noticed a knife in a vacant lot nearby, which looked like one of the knives from her kitchen set. She placed the knife in an envelope and gave it to Detective Green, who was working on the case.

¶ 8 On cross-examination, Hodges testified that, during her relationship with the defendant, she had to assist him in filling out forms and applications because of his learning disability. She also testified that, on the night of the incident, neither she nor Hurt was smoking phencyclidine (PCP). She denied that Canfield hit the defendant with a bottle or that Canfield and Hurt beat the defendant.

¶ 9 Olen Hurt testified that he knew the defendant through Hodges, whom he had known for about 20 years. He also knew Canfield very well. He knew Canfield lived off of Pulaski and the defendant lived with Hodges at Springfield and Thomas. He was aware that Hodges broke up with the defendant, and then in August 2013, was dating Canfield. On August 27, 2013, he was with Hodges and Canfield in front of an apartment building near the intersection of Springfield and Division. The defendant, who was wearing a black and gold hat, was also there but Hodges told him multiple times to go home. The group was listening to music and drinking beer.

Eventually, he walked across the street to buy two cigarettes with money Canfield had given him. After he returned, Canfield asked him for a cigarette and told him to share the other cigarette with Hodges. The defendant asked him for a cigarette, and he said no because they were not his to give. Hurt stated that the defendant then "got an attitude" and "was mad." The defendant left and walked towards Hodges' residence. Canfield left shortly after and walked towards his residence, which was in a different direction than the defendant had walked.

¶ 10 Hurt testified that, a few minutes later, he observed the defendant "riding past real, real fast" on a bicycle in the direction that Canfield had walked. The defendant was wearing the same clothes he wore earlier. He heard Hodges yell "Pookie" and saw her run off in the same direction as the defendant. He followed Hodges, and according to Hurt, saw the defendant and Canfield "swinging on each other." The defendant hit Canfield, who fell to the ground. The defendant was on top of Canfield, and he believed that the defendant was punching Canfield. Hodges pushed the defendant off Canfield and the defendant left on his bicycle. Canfield stood up, stumbled alongside a building, and fell onto his back. Hurt stated that he called Canfield's sister and 911 and waited for the police to arrive. He spoke to police at the scene and told them what he had observed. Hurt testified that the defendant called him the next day, but he hung up on him. He identified, from photographs of the crime scene, the hat and shoe that the defendant was wearing on August 27. He testified that no one had a weapon that night, and he did not see anything in the defendant's hand. On August 29, 2013, he and Hodges found a knife in a vacant lot near Springfield and Division.

¶ 11 The parties then stipulated to the introduction of a private surveillance camera video from an apartment building on Division. The video depicts Canfield stumbling out of the street and Hodges and Hurt checking on Canfield after he falls to the ground.

¶ 12 Dr. Eric Eason, a Cook County medical examiner, testified as an expert in forensic pathology. He stated that he performed the autopsy on Canfield and observed some abrasions on his body, along with a stab wound to the heart that was likely caused by a knife. Dr. Eason testified that the cause of death was that stab wound and that the manner of death was homicide. Canfield's blood alcohol content was .170.

¶ 13 Chicago police detective Richard Green testified that, about 12:50 a.m. on August 28, 2013, he and his partner, Detective Nicholas Spanos, responded to the crime scene. When they arrived, Canfield was already in transit to the hospital. He later learned that Canfield had died. At the scene, Green observed a black hat, a black and gold hat, a black shoe, multiple blood transfers, and a beer can. He spoke with Hurt while another detective spoke with Hodges. Green was able to locate a photograph of the defendant and showed that photograph to Hodges, who identified the defendant. The detectives then began to search for the defendant, but they could not find him. The detectives identified a silver bicycle at a house on Trumbull that matched the description given to them by the witnesses. On August 30, 2013, he received an envelope from Hodges containing a knife, which was inventoried. On that same day, he went with Hodges to her stepfather, Maurice Prior's house. Based on information they received from Prior, he went to Hope House where he found the defendant and arrested him. At that time, he did not observe any injuries on the defendant.

¶ 14 Emily Kuppinger, a fingerprint analyst with the Illinois State Police, testified that there were no suitable prints for comparison found on the knife found by Hodges. Francesca Antonaci, a forensic biologist with the Illinois State Police, testified that no blood was found on the knife.

¶ 15 The State rested its case, and the defendant moved for directed verdicts on both counts of first degree murder, which the court denied.

¶ 16 The defendant testified that he left school in the tenth grade, and he has attention deficit hyperactivity disorder (ADHD) and depression. He has two children with Hodges, and they lived together for eight years. In 2013, they moved from the 700 block of Trumbull to the 1000 block of Springfield. When they moved there, he met Hurt, who was already friends with Hodges. He later met Canfield, who he learned was in a romantic relationship with Hodges. Even after he learned about their relationship, he stayed in the apartment with Hodges to help with the children.

¶ 17 The defendant testified that, on the night of August 27, 2013, he was walking with his green bicycle on Springfield when he saw Hodges, Hurt, and Canfield hanging out and drinking alcohol. According to defendant, Hodges and Hurt were smoking PCP. He approached Hodges and questioned her about the PCP. As he did, Canfield smashed a bottle of Hennessy on his head. He fell to the ground and Canfield and Hurt "beat [him] pretty badly" and robbed him. Eventually, he stood up, grabbed his bicycle, and walked away from the area on Division towards Pulaski. He stated that he was dizzy so he could not ride his bicycle. As he was walking, Canfield approached him from behind and started punching him. He told Canfield to stop. He fell to the ground and Canfield, who was on top of him, continued to hit him. Canfield then

pulled out a knife and said "I'm going to kill you. You're going to die." He grabbed Canfield's wrist and twisted it around so that the knife went into Canfield's chest.

¶ 18 After stabbing Canfield, he ran away because the "gang-bangers" that were running towards the scene would have killed him. He went to Harding Park and stayed there overnight. The defendant admitted that he was wearing a black and yellow hat. The next day, he went to Hope House. The police arrested him at Hope House and took him to the police station where they asked him questions about Canfield. He did not tell them at that time that he had stabbed Canfield because he was afraid and unfamiliar with the law. The defendant testified that he stabbed Canfield because Canfield was trying to kill him and he was "fighting for [his] life." When shown the knife during his testimony, the defendant stated that he did not recognize the knife and did not carry a knife like it but that it looked like one from Hodges' knife set. Finally, he testified that he did not care that Hodges was dating Canfield and did not want Canfield to die.

¶ 19 On cross-examination, the defendant admitted that, when police arrested him, he did not tell them that Canfield attacked him and that he stabbed him with Canfield's own knife. He stated that he had no affiliation with the law and could not remember what he told the detectives. The defendant also testified that Detective Green punched him in the chest during questioning because he refused to talk to him.

¶ 20 In rebuttal, the State recalled Hodges. She testified that she ended her relationship with the defendant because she was involved with the Illinois Department of Children and Family Services (DCFS), and he was not helping her resolve her issues with DCFS because he continued

to use drugs. On the night in question, she did not see Canfield or Hurt hit the defendant or take money from him. She also denied seeing Canfield with a Hennessy bottle.

¶ 21 The State showed Hodges a surveillance video depicting a portion of the events in question. She testified that the video accurately depicted what occurred between 12:10 a.m. and 12:20 a.m. In particular, the video showed the defendant riding his bicycle towards Pulaski and Division, and her running on Division after the defendant. A few minutes later, the video showed the defendant on his bicycle again going in the opposite direction.

¶ 22 On cross-examination, Hodges acknowledged that DCFS was involved with her family because of her addiction to PCP and because one of her children was born drug-exposed. She denied smoking PCP on the night in question.

¶ 23 Detective Green was recalled, and he testified that he and Detective Spanos questioned the defendant at the police station after he was arrested. Prior to doing so, the defendant was read his *Miranda* rights and he acknowledged that he understood his rights. During the interrogation, the defendant changed his answer often as to what happened on the night of Canfield's murder. The defendant told Green that he knew Hodges was dating Canfield. He also stated that he had a green bicycle and a silver bicycle and that he shared the silver bicycle with a neighbor who lived on Trumbull. The defendant told Green that Canfield hit him on the head with a bottle that evening, and he showed the detective a wound on the top of his head that Green told him looked like "an old wound." The defendant stated that his hat protected his head. The defendant left the area after being hit and did not return that night. The defendant told Green that he did not know what happened to Canfield. Green denied that he punched the defendant and he did not see anyone else do so.

¶ 24 The defendant again moved for a directed verdict on both charges, which the court denied. The jury was instructed on first degree murder, second degree murder based on either the defendant's unreasonable belief that the killing was justified or that the defendant was acting under a sudden and intense passion resulting from serious provocation by the individual killed, and self defense. The jury found the defendant guilty on both charges of first degree murder. The defendant moved for a new trial, which the court denied.

¶ 25 At the sentencing hearing, the defendant's presentence investigation report (PSI) was submitted to the court. The PSI stated that the defendant was 30 years old, he had a total of four children, he did not have a criminal history, he left school after ninth grade, and he reported no history of alcohol or drug abuse. The State argued for the maximum sentence and emphasized the nature and circumstances of the offense and the need for punishment as a deterrent.

¶ 26 In mitigation, Katherine McSorley, the defendant's kindergarten teacher, testified that the defendant was very kind and loving, but that he had some developmental delays and was low-functioning. Throughout the defendant's childhood, she would visit the defendant's home during the holidays. From these visits, she observed that electricity and bedding were lacking and that the house was filthy and smelled like urine and rodents. She also observed that the defendant's clothes never fit him and that he slept on the floor in a sleeping bag. The defendant left school in the third grade. The defense also submitted an 18-page sentencing report prepared by the Sentencing Advocacy Group of Evanston. This report included the defendant's medical, school, and social services records, along with his family history. Defense counsel argued that the defendant did not have a criminal history and that, on the night in question, he was provoked by

the exclusion from Hodges' group. Counsel also pointed out that the defendant has a below-average intellectual functioning with an IQ of 54 on a scale of 100.

¶ 27 The court sentenced the defendant to 28 years' imprisonment. In issuing its ruling, the court stated:

> "For purposes of sentencing, the Court has considered the evidence at trial, the gravity of the offense, the pre-sentence investigation report, the financial impact of incarceration, all evidence, information, and testimony in aggravation and mitigation including all memorandum and reports provided, any substance abuse issues and treatment, the potential for rehabilitation, the possibility of sentencing alternatives, and all hearsay presented and deemed relevant and reliable."

The defendant filed a motion to reconsider his sentence, which the trial court denied. This appeal followed.

¶ 28 On appeal, the defendant first argues that his conviction should be reduced to second degree murder because he proved, by a preponderance of the evidence, that he either: (1) acted from a sudden and intense passion as a result of serious provocation after Canfield attacked him; or (2) had an actual, though unreasonable, belief in the need to defend himself from Canfield.

¶ 29 To sustain a conviction for first degree murder, the State must prove the defendant killed an individual by performing acts that were intended to kill, do great bodily harm, or create the strong possibility of death or great bodily harm and that the defendant committed those acts without lawful justification. 720 ILCS 5/9-1(a) (West 2012). "Second degree murder is not a lesser-included offense of first degree murder; rather, it is more accurately described as a *lesser-*

mitigated offense of first degree murder." (Emphasis in original.) *People v. Wilmington*, 2013 IL 112938, ¶ 48.

¶ 30 A defendant commits second degree murder when he commits first degree murder and, at the time of killing, one of the following mitigating factors is present: (1) the defendant was acting under an unreasonable belief that the killing was justified; or (2) the defendant was acting under a sudden and intense passion resulting from serious provocation by the individual killed but the defendant negligently or accidentally caused the death of the individual. 720 ILCS 5/9-2(a) (West 2012). The State must first prove beyond a reasonable doubt all the elements of first degree murder. *People v. Thompson*, 354 Ill. App. 3d 579, 586 (2004). First degree murder is reduced to second degree murder where the defendant proves the existence of one of the mitigating factors by a preponderance of the evidence. *People v. Manning*, 2018 IL 122081, ¶ 18 (citing *People v. Jeffries*, 164 Ill. 2d 104, 114 (1995)). If the defendant satisfies his burden, then the burden shifts back to the State to prove the absence of the mitigating factor beyond a reasonable doubt. *Thompson*, 354 Ill. App. 3d at 586. Whether a mitigating factor was proven by a preponderance of the evidence is a question of fact, and the trier of fact is responsible for weighing the credibility of witnesses. *People v. Castellano*, 2015 IL App (1st) 133874, ¶ 144-45.

¶ 31 Here, the jury was instructed on second degree murder under both mitigating factors and was instructed on self-defense. Based on its verdict, the jury necessarily rejected the existence of either mitigating factor and the claim of self-defense. In this appeal, the defendant does not claim that the State failed in its burden of proving him guilty of first degree murder beyond a reasonable doubt. Instead, we must determine "whether, viewing the facts in the light most favorable to the State, any rational trier of fact could have found that the defendant failed to

prove [a] mitigating factor by a preponderance of the evidence." *People v. Simon*, 2011 IL App (1st) 091197, ¶ 52; 720 ILCS 5/9-2(c) (West 2012). The jury's finding on this issue "will not be disturbed on review unless the evidence is so improbable or unsatisfactory as to raise a reasonable doubt as to the defendant's guilt." *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 87.

¶ 32 We first address the defendant's argument that the evidence showed that he was acting under a sudden and intense passion resulting from serious provocation. Serious provocation is defined as "conduct sufficient to excite an intense passion in a reasonable person." 720 ILCS 5/9-2(b). Four categories of serious provocation have been recognized by our courts: (1) mutual quarrel or combat, (2) substantial physical injury or assault, (3) illegal arrest, and (4) adultery involving a spouse. *People v. Garcia*, 165 Ill. 2d 409, 429 (1995).

¶ 33 The defendant here invokes the first mitigating factor, mutual combat. " 'Mutual combat is a fight or struggle which both parties enter willingly or where two persons, upon a sudden quarrel and in hot blood, mutually fight upon equal terms and where death results from the combat.' " *People v. Randall*, 2016 IL App (1st) 143371, ¶ 47 (quoting *People v. Austin*, 133 Ill. 2d 118, 125 (1989)). Moreover, " '[t]he provocation must be proportionate to the manner in which the accused retaliated.' " *Id.* (quoting *Austin*, 133 Ill. 2d at 126-27).

¶ 34 After viewing the evidence in the light most favorable to the State, we find that a rational trier of fact could conclude that the defendant failed to prove, by a preponderance of the evidence, that he and Canfield were engaged in mutual combat. Two eyewitnesses testified that the defendant instigated the confrontation when he followed Canfield on his bike as Canfield was walking home. More importantly, nothing in the eyewitnesses' testimony suggested that Canfield

provoked the defendant to fight or that the pair engaged in mutual combat. Rather, the record shows that, the defendant approached Canfield, initiated contact, and stabbed him. This evidence does not support a finding of mutual combat.

¶ 35 In reaching this conclusion, we note that, although the defendant testified that Canfield had approached him from behind and attacked him, the jury was free to reject the defendant's version of events. See *People v. Martin*, 271 Ill. App. 3d 346, 352 (1995) (stating that the jury "is not compelled to believe the defendant's version of the events surrounding the homicide even if uncontradicted"). This is especially so where, as here, the defendant's version of events was contradicted by the eyewitnesses. Additionally, there was no evidence that the defendant sustained any physical injuries, even though he claimed that Canfield hit him on the head with a glass bottle and that Canfield and Hurt beat him. Hodges testified that Canfield did not hit the defendant with a bottle and that Canfield and Hurt did not beat the defendant. Hodges also testified that the defendant always carried a kitchen knife, thus contradicting the defendant's claim that Canfield was the one with a knife. Furthermore, there were two different surveillance videos shown at trial that rebutted the defendant's claim that Canfield followed him. Therefore, it was reasonable for the jury to reject the defendant's version of Canfield's murder.

¶ 36 Alternatively, the defendant contends that his conviction should be reduced to second degree murder because he was acting under an unreasonable belief that the killing of Canfield was justified. Under this mitigating factor, the principle of self-defense is included. "Self-defense consists of six factors: '(1) force is threatened against a person, (2) the person is not the aggressor, (3) the danger of harm was imminent, (4) the threatened force was unlawful, (5) the person actually and subjectively believed a danger existed that required the use of the force

applied, and (6) the person's beliefs were objectively reasonable.' " *People v. Castellano*, 2015 IL App (1st) 133874, ¶ 149, (quoting *People v. Washington*, 2012 IL 110283, ¶ 35). "However, to be found guilty of second-degree murder, *the defendant* must prove by a preponderance of the evidence that all of the first five factors were present." (Emphasis in original.) *Id.*

¶ 37 The defendant argues that he acted under an actual, but unreasonable, belief in his need for self-defense against Canfield because Canfield attacked him and he was "fighting for his life" when Canfield pulled out a knife.

¶ 38 As mentioned, the evidence showed that two eyewitnesses observed the defendant follow Canfield on his bike and confront him, resulting in a physical altercation that ended with the defendant stabbing Canfield and causing his death. Further, those same witnesses testified, contrary to the defendant's assertions, that Canfield did not attack the defendant earlier in the night with a bottle. The witnesses also testified that the defendant followed Canfield and that the defendant was on top of Canfield when he was stabbed. As such, there was overwhelming evidence that the defendant, not Canfield, was the aggressor. Accordingly, a rational trier of fact could have rejected the defendant's contention that he acted in unreasonable self-defense.

¶ 39 Moreover, "[t]he trier of fact is not obligated to accept a defendant's claim of self-defense; rather, in weighing the evidence, the trier of fact must consider the probability or improbability of the testimony, the circumstances surrounding the killing and the testimony of other witnesses." *People v. Rodriguez*, 336 Ill. App. 3d 1, 15 (2002). As discussed above, the defendant's claim was contradicted by eyewitness testimony. It was the jury's responsibility to weigh the evidence, assess the credibility of the witnesses, and resolve any conflicts in the evidence. *People v. Kidd*, 2014 IL App (1st) 112854, ¶ 27. The jury heard all the evidence, was

instructed on both self-defense and second degree murder, and returned a guilty verdict for first degree murder. In doing so, the jury necessarily resolved these evidentiary conflicts in favor of the State. This court will not disturb the jury's finding on this issue unless the evidence is so improbable or unsatisfactory as to raise a reasonable doubt as to the defendant's guilt. This is not one of those cases.

¶ 40 The defendant nevertheless argues that his intellectual disability and subaverage IQ diminished his culpability for Canfield's death and supports the application of one of the mitigating factors. In support of this argument, he cites to *Atkins v. Virginia*, 536 U.S. 304, 316 (2002) (noting a state wide trend in prohibiting the execution of individuals with mental disabilities as an indication that society views such offenders as being less culpable than the average criminal). Here, unlike in *Atkins*, the issue is not whether the defendant's sentence constitutes cruel and unusual punishment. Rather, the issue at bar is whether the defendant proved by a preponderance of the evidence the existence of the first five factors of self defense.

¶ 41 In conclusion, a rational trier of fact could have found that the evidence did not establish either that the defendant acted under a sudden and intense passion resulting from serious provocation (mutual combat) or that he had an unreasonable belief in his need for self-defense. Thus, there is no basis to reduce the defendant's conviction from first degree murder to second degree murder, and his conviction for first degree murder is affirmed.

¶ 42 The defendant next argues that his 28-year sentence is excessive. He requests this court to reduce his sentence or remand for resentencing.

¶ 43 The State responds that the defendant forfeited this sentencing issue because he did not specifically raise it with the trial court. See *People v. Heider*, 231 Ill. 2d 1, 15 (2008) (in order to

preserve sentencing issues for appellate review the issues must be raised in a postsentencing motion filed within 30 days following the imposition of sentence). Here, the record shows that the defendant filed a motion to reconsider sentence generally asserting that his sentence was excessive. Although the defendant did not specifically assert that the court abused its discretion by failing to consider evidence and factors in mitigation, we will consider the sentencing issue on its merits where the defendant generally asserted that the court's sentence was excessive. See *People v. McCoy*, 281 Ill. App. 3d 576, 585 (1996) ("Waiver limits the parties, but not the courts.").

¶ 44 The Illinois Constitution requires a trial court to impose a sentence that balances the seriousness of the offense and the defendant's rehabilitative potential. Ill. Const. 1970, art. I, § 11; *People v. Lee*, 379 Ill. App. 3d 533, 539 (2008). To achieve such balance, the trial court must consider both aggravating and mitigating factors including: "the nature and circumstances of the crime, the defendant's conduct in the commission of the crime, and the defendant's personal history, including his age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment and education." *People v. Maldonado*, 240 Ill. App. 3d 470, 485-86 (1992). The trial court, as opposed to the reviewing court, is the best situated to assess these factors. *People v. Sullivan*, 2014 IL App (3d) 120312 ¶ 51. Accordingly, the trial court has great discretion in imposing the appropriate sentence. *People v. Jackson*, 375 Ill. App. 3d 796, 800 (2007). Pursuant to Illinois Supreme Court Rule 615(b)(4), reviewing courts have the power to reduce sentences (*id.*); however, "the scope of an appellate court's examination of a sentence imposed by the trial court is limited to whether the record discloses that the trial court abused its discretion" (*People v. O'Neal*, 125 Ill. 2d 291, 298 (1988)).

¶ 45 Here, we find that the court did not abuse its discretion in imposing a sentence of 28 years' imprisonment. The defendant was convicted of first degree murder, an offense with a statutory sentencing range of 20 to 60 years' imprisonment. 730 ILCS 5/5-4.5-20(a) (West 2012). The defendant's sentence of 28 years was 8 years above the minimum and 32 years below the maximum. In this case, because the court's sentence falls within the statutory range, we must presume it is proper. See *People v. Neasom*, 2017 IL App (1st) 143875, ¶ 49. Such a sentence will only be overturned upon "an affirmative showing that the sentence imposed greatly departs from the spirit and purpose of the law or is manifestly contrary to constitutional guidelines." *People v. Boclair*, 225 Ill. App. 3d 331, 335 (1992). The defendant is unable to make such a showing.

¶ 46 The defendant argues that the trial court did not consider evidence and factors in mitigation in imposing sentence. Specifically, he claims that the court did not consider his childhood, his intellectual and learning disabilities, and his lack of a criminal background. He also argues that the trial court failed to state its reasoning for sentencing him to 28 years in prison and that this was also an abuse of discretion.

¶ 47 We initially note that "a court is not required to expressly outline every factor it considers for sentencing and we presume the court considered all mitigating factors on the record in the absence of explicit evidence to the contrary." *People v. Harris*, 2015 IL App (4th) 140696, ¶ 57. Nevertheless, despite the defendant's assertions, the trial court indicated it considered the mitigating factors the defendant argues on appeal. The record shows that the trial court was aware of the defendant's sentencing report which contained his medical, school, and social services records. Additionally, in announcing sentence, the court noted that it considered the

presentence investigation report and "all evidence, information, and testimony in aggravation and mitigation, including all memorandum and reports provided, any substance abuse issues and treatment, the potential for rehabilitation *** and all hearsay presented and deemed relevant and reliable."

¶ 48 Given the serious nature of the offense and the need to deter others, we do not find that the defendant's sentence was greatly at variance with the purpose and spirit of the law or manifestly disproportionate to the seriousness of the offense. See *People v. Alexander*, 239 Ill. 2d 205, 212-15 (2010) (upholding the trial court's imposed sentence because the appropriate factors were adequately considered and reversing the appellate court's finding of an excessive sentence because it had improperly reweighed the sentencing factors and substituted its own judgment for that of the trial court). Accordingly, we conclude that the trial court did not abuse its discretion in sentencing the defendant to 28 years imprisonment for first degree murder.

¶ 49 Finally, the defendant argues that his fines and fees order should be corrected in several ways. Specifically, he contends that multiple assessments were improperly imposed and should be vacated and that several assessments are subject to offset by his presentence custody credit.

¶ 50 On February 26, 2019, while this appeal was pending, our Supreme Court adopted new Illinois Supreme Court Rule 472, which sets forth the procedure in criminal cases for correcting sentencing errors in, as relevant here, the "imposition or calculation of fines, fees, and assessments or costs" and "application of *per diem* credit against fines." Ill. S. Ct. R. 472(a)(1), (2), (eff. Mar. 1, 2019). Subsequently, on May 17, 2019, Rule 472 was amended to provide that "[i]n all criminal cases pending on appeal as of March 1, 2019, or appeals filed thereafter in which a party has attempted to raise sentencing errors covered by this rule for the first time on

appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule." Ill. S. Ct. R. 472(e) (eff. May 17, 2019). "No appeal may be taken" on the ground of any of the sentencing errors enumerated in the rule unless that alleged error "has first been raised in the circuit court." Ill. S. Ct. R. 472(c) (eff. May 17, 2019). Therefore, pursuant to Rule 472, we "remand to the circuit court to allow [defendant] to file a motion pursuant to this rule," raising the alleged errors regarding fines and fees and *per diem* credit. Ill. S. Ct. R. 472(e) (eff. May 17, 2019).

¶ 51 Accordingly, the fines and fees issue is remanded pursuant to Rule 472(e), and the judgment of the circuit court of Cook County is affirmed in all other respects.

¶ 52 Affirmed and remanded as to fines, fees, and costs.