2026 IL App (1st) 241919-U

No. 1-24-1919

Order filed September 10, 2026

Fourth Division

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

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. 21 CR 1407201
	)	
ERIC RAMIREZ,	)	Honorable
	)	Terry Gallagher,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE LYLE delivered the judgment of the court.
Justices Navarro and Ocasio concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's convictions and sentence over his claims that the trial court erred in admitting certain evidence and that his sentence is excessive.

¶ 2 Following a jury trial, defendant Eric Ramirez was found guilty of two counts of aggravated battery with a firearm, then sentenced to consecutive prison terms of 10 and 12 years. The evidence presented at trial showed that Mr. Ramirez shot the two victims, Robert Buchner and Jose Ortega, at the Thirsty Beaver, a bar in Crestwood, Illinois. The jury found Mr. Ramirez not

guilty of attempted first degree murder and not guilty of personally discharging a firearm that proximately caused great bodily harm to another, but guilty of aggravated battery.

¶ 3 On appeal, Mr. Ramirez contends that he was denied the right to a fair trial where the trial court permitted the State to introduce irrelevant and inflammatory evidence, including statements from the victims after the shooting that they feared dying, gruesome photographs of Mr. Buchner's injuries, and Mr. Buchner's bloody clothing. He also contends that his aggregate 22-year sentence is excessive in light of the mitigating evidence presented, including his lack of criminal history, his rehabilitative potential, and his expression of genuine remorse. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 4 I. BACKGROUND

¶ 5 A. Pretrial Motions *in Limine*

¶ 6 Prior to trial, the State filed a motion *in limine* seeking to introduce and exclude certain evidence. As relevant here, the State sought to introduce statements made by Mr. Buchner to one of the police officers who responded to the shooting. According to the State, Mr. Buchner told the officer, "I don't want to die, don't let me die."

¶ 7 At the hearing on the motion, the State explained that it sought to introduce through the testimony of a police officer that Mr. Buchner repeatedly said to the officer, "Don't let me die." The State indicated that it also intended to introduce a 30-second "squad video" of Mr. Ortega receiving aid after being shot. On the video, Mr. Ortega can be heard stating, "I don't want to die."

¶ 8 The State argued that these statements were exceptions to the rules against hearsay because they were excited utterances. The State contended that the statements were relevant to prove that Mr. Ramirez took a "substantial step" toward the commission of the attempted murder charges. The State maintained that Mr. Ortega and Mr. Buchner's "inherent understanding of their own

injuries and they're outwardly voicing them does corroborate the evidence that will come in which will show that [Mr. Ramirez] not only caused bodily harm for the aggravated battery [with a] firearm, but also that it was a substantial step."

¶ 9 In response, defense counsel conceded that the statements were excited utterances, but asserted that the statements were not relevant and highly prejudicial. Defense counsel contended that whether Mr. Ortega or Mr. Buchner believed they might die was not relevant to whether Mr. Ramirez took a substantial step toward the commission of a murder. Defense counsel maintained that the prejudicial harm of the statements outweighed any relevant value.

¶ 10 The court allowed the State to introduce both statements finding, "they are relevant and they are excited utterances."

¶ 11 Defense counsel next made an oral motion *in limine* to bar the introduction of pictures of Mr. Buchner's injuries and the admission of the jersey that Mr. Buchner was wearing at the time of the shooting. The State sought to introduce three pictures of Mr. Buchner's face that were taken at the hospital, depicting the gunshot wound to his face. The jersey had Mr. Buchner's blood on it.

¶ 12 Defense counsel argued that both the pictures and the jersey were too graphic and were not relevant. Defense counsel maintained that neither were necessary to prove the extent of Mr. Buchner's injuries because the jury would hear Mr. Buchner's testimony and "medical testimony."

¶ 13 The State responded that the pictures and the jersey were "highly relevant" and a direct result of Mr. Ramirez's crimes. The State acknowledged that the evidence was prejudicial, but argued that it was relevant to show that Mr. Buchner suffered bodily harm, which was an element of the charged offenses. The State also asserted that the evidence demonstrated the "severity of the substantial step toward attempt murder." The State contended that the jury should be permitted to see "the evidence of the crime scene" that Mr. Ramirez created.

¶ 14 The court found that the photographs and the jersey were not cumulative and that the prejudicial harm would not outweigh the probative value of the evidence. The court therefore allowed the State to introduce the jersey and the photographs.

¶ 15 B. Jury Trial

¶ 16 At trial, Mr. Buchner testified that on October 10, 2021, he was at the Thirsty Beaver, a bar located in Crestwood, Illinois. At the bar, he joined a few friends, including Mr. Ortega, to watch sports. Mr. Buchner had been to the Thirsty Beaver many times before and recognized the bartender, Kyleigh McGrath.

¶ 17 Mr. Buchner, Mr. Ortega, and their friends were drinking and playing on the slot machines. Later that evening, Mr. Buchner observed Mr. Ortega arguing with Ms. McGrath. Ms. McGrath asked Mr. Ortega to leave the bar. Mr. Buchner and Mr. Ortega went outside to the bar's patio and Mr. Ortega used his phone to order a rideshare car. While they were outside, Mr. Buchner observed Mr. Ramirez approach Mr. Ortega from behind and grab him. Mr. Ramirez threw Mr. Ortega to the ground and kicked him. Mr. Buchner had never seen Mr. Ramirez before that night.

¶ 18 Mr. Buchner, who was holding a beer bottle, attempted to intervene. He pushed Mr. Ramirez off Mr. Ortega, but did not try to hit Mr. Ramirez with the beer bottle. After Mr. Buchner pushed Mr. Ramirez, Mr. Ramirez pulled out a gun and shot Mr. Buchner in the face. Mr. Buchner felt pain in the right side of his face and in his shoulder and observed blood on his clothes. Mr. Buchner ran from the bar and jumped over the fence into the bar's parking lot. While he was running, he heard a second gunshot. The State played surveillance video from the Thirsty Beaver and Mr. Buchner identified himself, Mr. Ortega, and Mr. Ramirez in the video. The video depicted Mr. Ramirez throwing Mr. Ortega to the ground and attacking him.

¶ 19 When police arrived, Mr. Buchner was put in an ambulance and transported to the hospital. At the hospital, the jersey he was wearing was cut off him. The State introduced the jersey as an exhibit and published it to the jury. Mr. Buchner spent four days at the hospital being treated for a fractured jaw. While Mr. Buchner was at the hospital, police officers showed him a series of photographs. Mr. Buchner identified Mr. Ramirez in the photographs as the shooter.

¶ 20 Mr. Buchner had surgery on his jaw and underwent three months of rehabilitation treatment. At the time of trial, Mr. Buchner still had lasting effects from the injury, including scar tissue in his face and difficulty drinking. The bullet was still in his body. The State next introduced three photographs of Mr. Buchner's injuries that were taken at the hospital. The State published the photographs to the jury.

¶ 21 Mr. Ortega testified that he had been going to the Thirsty Beaver for "years" and knew Ms. McGrath as the bartender. They had a relationship where he would "joke around" with her. On the night of the shooting, he was at the bar for eight or nine hours and drank "at least" a 12-pack of beer. He testified that he had difficulty remembering what occurred that night because he was drunk. He did not recall his entire interaction with Ms. McGrath that night, but remembered that she cut him off and asked him to leave the bar. The State played a surveillance video from the bar and Mr. Ortega identified himself and Ms. McGrath in the video, but he did not recall the interaction.

¶ 22 After Ms. McGrath asked Mr. Ortega to leave the bar, he stepped outside to call a rideshare car. Mr. Ortega saw that his ride was six or seven minutes away, so he went back inside the bar to say goodbye to his friends. When he went back inside, Ms. McGrath told him to leave the bar. Mr. Ortega responded that it was not necessary for him to wait outside because his ride was six or seven minutes away.

¶ 23 Mr. Ramirez, who was inside the bar at the time, told Mr. Ortega to go wait outside. Mr. Ortega told him that it was none of his business, he did not work at the bar, and that he should not be talking to Mr. Ortega in that manner. Mr. Ortega then walked outside to the bar's patio. As he stepped outside, he was pushed or thrown to the ground. As he got up, he saw a "muzzle flash." He did not see Mr. Buchner. After he saw the muzzle flash, he was "shot" and "went straight to the ground." Mr. Ortega observed that he had been shot in the chest and was bleeding.

¶ 24 Two people came to help him and put pressure on his wound. Mr. Ortega told the two people: "I don't want to die or I am gonna die." The next thing Mr. Ortega remembered was being in an ambulance. Inside the ambulance, he felt like he was "dying" and he was trying to stay awake. At the hospital, he was in "terrible" pain. Initially, he could not take pain medication because his blood pressure was too low. He was in the hospital for eight days. The bullet punctured his lung and lodged in his back. While he was at the hospital, Crestwood police officers approached him to identify the shooter. Mr. Ortega refused to identify anyone because he was "in and out of consciousness" and taking pain medication and did not want to falsely identify anyone. He had surgery to remove the bullet a few months later. As a result of his injuries, he missed six months of work.

¶ 25 The State played a surveillance video from the bar and Mr. Ortega identified himself, Mr. Buchner, Ms. McGrath, and Mr. Ramirez in the video. The video showed Mr. Ortega arguing with Ms. McGrath, using his phone to call the rideshare, and walking in and out of the bar. The video also showed Mr. Ortega speaking with Mr. Ramirez. The video showed Mr. Ortega walking back outside and falling to the ground. Mr. Ortega testified that he had previously reviewed audio from a "squad video." On the squad video, he could hear himself saying that he did not want to die or he thought he was going to die.

¶ 26 Michael Ioannoni testified that he was employed as a Chicago firefighter and Emergency Medical Technician. He was at the Thirsty Beaver on the night of the incident drinking with friends. Around 1:30 a.m. that night, Mr. Ioannoni observed the bartender ask a man to leave the bar. Mr. Ioannoni had never seen the man before. The man was intoxicated and being loud. The bartender was very upset and started crying. One of the patrons, who Mr. Ioannoni identified as "the shooter," also asked the man to leave "nicely." After the man did not leave, "the shooter" put the man in a headlock and threw him to the ground. Mr. Ioannoni then saw "a muzzle blast, a plume of smoke," smelled "gun powder" and knew there was a gunshot. Mr. Ioannoni never saw a gun, but did see "the smoke and the flash." Mr. Ioannoni later learned that the man who had been shot was Mr. Ortega.

¶ 27 Mr. Ioannoni and his friend went to help Mr. Ortega, who had a gunshot wound to his shoulder. Mr. Ioannoni applied pressure to the wound for a few minutes until paramedics arrived. At trial, Mr. Ioannoni viewed a surveillance video from the Thirsty Beaver and identified "the shooter," himself, and the man who was shot on the video. Mr. Ioannoni testified that everything happened "very fast," and he did not know there was a second shooting victim until after the fact.

¶ 28 Ms. McGrath testified that she had been a waitress and bartender at the Thirsty Beaver for five years. She knew Mr. Ortega and Mr. Buchner as regular customers at the Thirsty Beaver who would come in together once or twice a week. She also knew Mr. Ramirez as a regular customer who came in often, but not as frequently as Mr. Ortega and Mr. Buchner. She testified that Mr. Ortega and Mr. Buchner were already at the bar when she arrived for her shift around 5:45 p.m. on October 10, 2021. She served Mr. Ortega one drink before cutting him off around 8:00 or 9:00 p.m. because he was calling her names and "being really nasty" toward her. She was not afraid of Mr. Ortega, but she was upset with him.

¶ 29 Mr. Ramirez arrived at the bar around midnight and ordered a beer. While Ms. McGrath was talking with Mr. Ramirez, Mr. Ortega approached the bar and started calling her names and trying to order more beer. Eventually, Mr. Ortega tried to enter behind the bar, but Ms. McGrath pushed him away. Mr. Ortega then went outside to the bar's patio area. Mr. Ramirez told Ms. McGrath that he would be right back and left the bar. Mr. Ramirez returned 10 or 15 minutes later and asked Ms. McGrath if she was still having problems with Mr. Ortega. Ms. McGrath told him that Mr. Ortega was still bothering her.

¶ 30 Around 1:30 a.m. that night, Ms. McGrath told Mr. Ortega to leave the bar. Mr. Ortega went outside, but then came back inside the bar. Ms. McGrath screamed at him and again told him to leave. Mr. Ortega ignored her and kept walking inside the bar. Ms. McGrath was "so frustrated" that she started crying and asked Mr. Buchner for help with Mr. Ortega. She also asked people seated around the bar, including Mr. Ramirez, for help. Ms. McGrath saw Mr. Ortega walk out onto the bar's patio and argue with other customers who were telling him to leave the bar.

¶ 31 Ms. McGrath was standing in the doorway to the patio when she saw Mr. Ramirez walking toward the door with a black handgun in his hand. Mr. Ramirez walked out onto the patio, grabbed Mr. Ortega and threw him to the ground. Mr. Ramirez kicked Mr. Ortega in the face and stomach. Mr. Buchner intervened and Mr. Ramirez shot Mr. Buchner in the face. Ms. McGrath ran back inside into the kitchen and called 911. When she exited the kitchen, she saw Mr. Ramirez get into his car and drive out of the parking lot. She also saw Mr. Buchner jump a fence "with blood gushing out of his face." Finally, she saw Mr. Ortega lying on the ground with two people trying to help him. When police arrived, she told them that Mr. Ramirez "did it."

¶ 32 The State then played surveillance video from the Thirsty Beaver where Ms. McGrath identified herself, Mr. Ortega, Mr. Buchner, and Mr. Ramirez. On the video, Ms. McGrath can be

seen serving beer to Mr. Ramirez, and Mr. Ortega can be seen walking into the bar. The video also shows Ms. McGrath on her phone after the shooting and Mr. Buchner jumping over the fence. A second video showed the parking lot where Mr. Ramirez can be seen leaving the bar in his vehicle around 12:41 a.m. and then returning to the bar about 10 minutes later.

¶ 33 Sergeant Angelina Summerfield testified that she was on patrol around 1:30 a.m. on October 11, 2021, when she heard three gunshots. She drove toward the Thirsty Beaver and observed a red vehicle with one male and one female standing outside the vehicle. She observed that the male was wearing a white jersey and holding the right side of his neck with his right hand. Sergeant Summerfield learned the man was Mr. Buchner. When Sergeant Summerfield tried to speak to Mr. Buchner, he kept repeating: "don't let me die. I don't want to die." Sergeant Summerfield radioed for an ambulance and retrieved a bandage to apply pressure to Mr. Buchner's neck. Mr. Buchner was transported to the hospital in an ambulance.

¶ 34 Sergeant Leslee Nissen, a crime scene investigator with the Illinois State Police testified that he responded to the Thirsty Beaver in the early morning hours of October 11, 2021, to assist the Crestwood Police Department with an "aggravated battery scene involving a shooting." Sergeant Nissen conducted a walkthrough of the bar where she observed multiple discharged .45 caliber cartridge cases and a pool of blood on the outdoor patio. Sergeant Nissen marked evidence and took photographs of the scene. Sergeant Nissen also took a swab from a beer bottle that she observed sitting on the bar.

¶ 35 The parties stipulated that a forensic scientist from the Illinois State Police would testify that both of Mr. Ramirez's hands tested positive for gunshot residue. The State also submitted Mr. Buchner and Mr. Ortega's hospital records into evidence. Finally, Sergeant Mike Alexander

testified that Mr. Ramirez consented to a search of his apartment after his arrest. Sergeant Alexander recovered .45 caliber ammunition and an empty handgun case from the apartment.

¶ 36 Mr. Ramirez testified on his own behalf that on October 10, 2021, he had been drinking at two other bars before he arrived at the Thirsty Beaver shortly after midnight on October 11. He testified that he drove to the bar and acknowledged that he should not have been driving because he had already consumed 10 or 12 beers before he arrived. He recognized the bartender that night, Ms. McGrath, from his previous visits to the bar and stated that he visited the bar "pretty regularly." He had a brief conversation with Ms. McGrath about becoming friends on Facebook.

¶ 37 Mr. Ramirez testified that he was "armed" with a handgun when he arrived at the bar. He testified that he had a firearm owners identification card (FOID), but did not have a concealed carry license (CCL). He acknowledged that because he did not have a CCL, it was not legal for him to carry the gun that night. He testified that he had he gun in his vehicle "most of the day," but when he arrived at the Thirsty Beaver, he had the gun in his waistband. He testified that he was planning to drive home before he went to the Thirsty Beaver, so he had placed the gun in his waistband intending to return home with the gun.

¶ 38 While Mr. Ramirez was drinking his beer at the Thirsty Beaver, he noticed an individual who was "causing a little bit of trouble." Mr. Ramirez testified that he had never seen Mr. Ortega or Mr. Buchner before that night. Throughout the night, Mr. Ramirez watched the interactions between Mr. Ortega and Ms. McGrath. He observed they had been yelling at each other, and Ms. McGrath told Mr. Ortega to "get out" several times.

¶ 39 Defense counsel played surveillance video from the bar and Mr. Ramirez identified himself, Mr. Ortega, Mr. Buchner, and Ms. McGrath in the video. On the video, Mr. Ortega can be seen shouting at other customers on the bar's patio while the customers shout back at him. At

this point, Mr. Ramirez decided he was going to "physically confront" Mr. Ortega and "remove him from the bar." As Mr. Ramirez approached the patio door, he drew his handgun. Mr. Ramirez testified that he was intending to "scare" or "intimidate" Mr. Ortega, but was not intending to shoot him.

¶ 40 Mr. Ramirez approached Mr. Ortega from behind, grabbed him around the neck, and threw him to the ground. Mr. Ramirez then kicked Mr. Ortega "a couple of times," and attempted to strike him in the face with the butt of his gun. Mr. Ramirez identified a still picture from the surveillance footage that he testified showed his index finger sitting on the slide of the gun, rather than near the trigger, which he testified indicated that that he was not prepared to shoot the gun. After he struck Mr. Ortega with the gun, he was shoved away by Mr. Buchner, although he did not know Mr. Buchner at the time.

¶ 41 Mr. Ramirez observed that Mr. Buchner was continuing to come toward him while Mr. Ortega was attempting to stand up. Mr. Ramirez believed that Mr. Buchner was reaching up toward the gun in Mr. Ramirez's hand. Mr. Ramirez fired the gun at Mr. Buchner. Mr. Ramirez testified that he did not aim the gun and "shot without thinking it through." Mr. Ramirez could tell that he shot Mr. Buchner by the way Mr. Buchner reacted. Mr. Ramirez began heading toward the exit when he saw Mr. Ortega approaching him. Mr. Ramirez shot Mr. Ortega. He testified that he was not intending to kill Mr. Ortega, but "thought [he] had to stop [Mr. Ortega] from moving toward" him.

¶ 42 Mr. Ramirez returned to his vehicle and drove home. After returning home, Mr. Ramirez walked to a forest preserve, dissembled the gun, and threw the pieces into the woods. Mr. Ramirez then sat against a tree and fell asleep. When he awoke, he walked back to his apartment complex and saw police officers. He approached the officers and told them who he was. The officers took

him into custody. Mr. Ramirez acknowledged that when he was questioned by officers, he lied and told them he did not remember the full details of what had happened. Mr. Ramirez testified that he did not plan to shoot anyone, but was "freaking out" and "panicking."

¶ 43 On cross-examination, Mr. Ramirez testified that after he arrived at the Thirsty Beaver, he left for a 10-minute period and then returned. Mr. Ramirez acknowledged that neither Mr. Ortega nor Mr. Buchner had a weapon. Mr. Buchner was holding a beer bottle, but Mr. Ramirez recognized that Mr. Buchner did not try to hit him with the bottle. Mr. Ramirez testified that he did not check on Mr. Ortega or Mr. Buchner after he shot them and did not call for help. Mr. Ramirez acknowledged that Mr. Ortega "wasn't even near" him when he shot Mr. Ortega.

¶ 44 The jury found Mr. Ramirez guilty of aggravated battery with a firearm of both Mr. Ortega and Mr. Buchner, but not guilty of attempted first degree murder and not guilty of personally discharging a firearm that proximately caused great bodily harm to another.

¶ 45 C. Sentencing

¶ 46 The State filed a sentencing memorandum in which it argued that Mr. Ramirez's sentences on the two aggravated battery counts must be served consecutively because he inflicted severe bodily injury to both Mr. Ortega and Mr. Buchner. In aggravation, the State noted that Mr. Ramirez's conduct caused or threatened serious harm and the sentence was necessary to deter others from committing the same offense. The State argued that Mr. Ramirez's conduct posed a threat of serious harm to every person in the bar, not just Mr. Ortega and Mr. Buchner. Finally, the State contended that Mr. Ramirez's actions after the shooting, including fleeing the scene, dissembling and concealing the firearm, and lying to police indicated a lack of remorse.

¶ 47 At the sentencing hearing, the State reiterated the arguments made in its memorandum. In addition, the State contended that Mr. Ramirez lied during his testimony. It was the State's position

that Mr. Ramirez did not arrive at the Thirsty Beaver with the gun in his waistband as he testified, but he instead retrieved the gun from his house during the 10-minute period when he left the bar. In support of the State's position that Mr. Ramirez caused severe bodily injury, the State submitted the medical records and photographs of the injuries that it had introduced at trial. The State acknowledged that Mr. Ramirez had no criminal history, but asserted that this factor did not outweigh the factors in aggravation. Finally, the State noted that Mr. Ramirez's presentence investigation report indicated that he had a stable upbringing and his parents supported him, which suggested that Mr. Ramirez "should know better." The State asked that the court sentence Mr. Ramirez to an aggregate term of 30 years.

¶ 48 In mitigation, defense counsel contended that Mr. Ramirez did not intend to shoot anyone that night. Defense counsel noted that before this incident, Mr. Ramirez had never been arrested. Since his arrest, he had been in custody for almost three years and had not received an infraction. Defense counsel maintained that this demonstrated Mr. Ramirez's rehabilitative potential. Mr. Ramirez scored a 1 on the Public Safety Assessment. Defense counsel asked the court for a sentence of 16 years.

¶ 49 In allocution, Mr. Ramirez apologized to Mr. Ortega and Mr. Buchner. He also apologized to the employees and other patrons at the Thirsty Beaver. Mr. Ramirez asked the court to consider his lack of criminal background and the fact that he had not received any infractions since being incarcerated during trial. Mr. Ramirez noted that while he was incarcerated, he had taken courses in math and science in addition to courses in stress and anger management and mindfulness. He had also enrolled in Alcoholics Anonymous as he worked toward sobriety. Mr. Ramirez concluded that he could not change the past, but sought to improve himself so that he could have a better

future and successfully reintegrate into society. Mr. Ramirez's parents also made statements to the court asking for leniency.

¶ 50 In determining Mr. Ramirez's sentence, the court found that the evidence supported a finding that Mr. Ramirez acted with "premeditation." The court noted there was evidence to support a conclusion that Mr. Ramirez went home to retrieve the firearm. The court stated that Mr. Ramirez "told the police he went home to get the gun." The court observed that Mr. Ramirez initiated the physical confrontation with Mr. Ortega and he did so with a gun in his hand. The court did not believe there was any evidence of provocation or evidence that Mr. Ramirez was acting in self-defense or in defense of another. The court also found that Mr. Ramirez caused Mr. Buchner and Mr. Ortega severe bodily injuries. The court stated that in determining the appropriate sentence, it considered the necessity of deterring others from committing similar offenses.

¶ 51 With regard to the mitigating factors, the court noted that Mr. Ramirez had no criminal background. The court acknowledged that Mr. Ramirez had rehabilitative potential based on his lack of criminal history, his education level, and his familial support. The court determined, however, that those factors were outweighed by the "grievous nature of the crimes he committed." The court sentenced Mr. Ramirez to an aggregate term of imprisonment of 22 years, 12 years for aggravated battery with a firearm to Mr. Buchner, and 10 years for aggravated battery with a firearm to Mr. Ortega.

¶ 52 Mr. Ramirez filed a motion to reconsider his sentence in which he argued that his sentence was excessive where the court failed to consider or adequately weigh his lack of criminal history, that the circumstances were unlikely to recur, and that Mr. Ramirez was unlikely to reoffend. He further contended that there was no evidence to support the court's determination that the shootings were premeditated. Mr. Ramirez pointed out that the State noted that he left the bar for an

unexplained reason and then returned, but there was no evidence to support that he left the bar to retrieve the gun. He pointed out that the jury's verdict of not guilty on the attempted first degree murder counts demonstrated that the jury did not accept the State's premeditation evidence. He maintained that the court therefore should not have considered premeditation as an aggravating factor.

¶ 53 Mr. Ramirez further contended that the court did not adequately weigh his "ongoing and increasing problem with alcohol abuse" and his remorse for his actions. Mr. Ramirez highlighted his statement in allocution where he apologized to both victims and others. Mr. Ramirez concluded that a sentence of 16 years would more accurately serve the purpose of returning him to useful and law-abiding citizenship.

¶ 54 At the hearing on the motion, defense counsel argued that the question of whether Mr. Ramirez caused "serious bodily harm" should have been presented to the jury. Defense counsel maintained that Mr. Ramirez's sentences should not be consecutive where the jury found that Mr. Ramirez did not cause great bodily harm and did not find him guilty of attempted murder. Defense counsel also asserted that the court should not have accepted the State's premeditation argument where the evidence presented at trial did not show that Mr. Ramirez went home to retrieve the gun when he left the bar.

¶ 55 In response, the State contended that whether a defendant caused severe bodily harm to require consecutive sentencing is a question for the court, not the jury. The State noted that premeditation was just one of the aggravating factors that the court considered, but maintained that the evidence supported the court's finding that Mr. Ramirez left the bar to retrieve the gun.

¶ 56 The court found that the evidence demonstrated that the victims suffered severe bodily harm. With regard to premeditation, the court found that even if defense counsel was correct that

Mr. Ramirez did not leave the bar to retrieve the gun, "the video shows he had the gun in his hand when he left the bar to go to the patio. I think that's enough to establish premeditation even in that short amount of space." The court therefore denied the motion to reconsider sentence.

¶ 57 Mr. Ramirez filed a timely notice of appeal. We find that we have jurisdiction to consider the merits of this appeal pursuant to Illinois Supreme Court Rules 603 (eff. Feb. 1, 2013) and 606 (eff. Jul. 1, 2017).

¶ 58 II. ANALYSIS

¶ 59 On appeal, Mr. Ramirez contends that he was deprived of a fair trial where the State was permitted to introduce irrelevant and highly prejudicial evidence that was intended only to inflame the passions of the jury. Mr. Ramirez identifies Mr. Buchner and Mr. Ortega's statements that they did not want to die or feared they would die, the photographs of Mr. Buchner's injuries, and the bloody jersey that Mr. Buchner was wearing at the time of the shooting. He maintains that this evidence was not relevant to any fact at issue in the case, was cumulative, and that any probative value of the evidence was outweighed by its prejudicial harm. Mr. Ramirez also contends that his 22-year sentence is excessive considering the mitigating circumstances presented.

¶ 60 A. Admission of Evidence

¶ 61 We will first address Mr. Ramirez's contentions that the court erred in permitting the State to introduce highly prejudicial, non-probative evidence such that he was deprived of a fair trial. It is well-settled that the admission of evidence is within the discretion of the trial court and we will not disturb the trial court's ruling on the admissibility of evidence absent a clear showing that the trial court abused its discretion. *People v. Ward*, 101 Ill. 2d 443, 455-56 (1984). A trial court abuses its discretion only when its ruling is "arbitrary, fanciful or unreasonable or where no reasonable

man would take the view adopted by the trial court." (Internal quotation marks omitted). *People v. Donoho,* 204 Ill. 2d 159, 182 (2003).

¶ 62 "Evidence is considered relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action either more or less probable than it would be without the evidence." *People v. Barnes,* 2013 IL App (1st) 112873, ¶ 41; Ill. Rs. Evid. 401, 402 (eff. Jan. 1, 2011). However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Ill. R. Evid. 403 (eff. Jan. 1, 2011). Our supreme court has explained that prejudice means " 'an undue tendency to suggest decision on an improper basis, commonly an emotional one, such as sympathy, hatred, contempt or horror.' " *People v. Eyler,* 133 Ill. 2d 173, 218 (1989) (quoting Michael H. Graham, Cleary and Graham's Handbook of Illinois Evidence § 403.1 (4th ed. 1984)). Accordingly, we will first determine whether the circuit court abused its discretion in determining that the identified evidence was relevant. If so, the evidence was irrelevant and should have been excluded. If not, we will next determine whether the trial court nonetheless should not have admitted the evidence because the danger of unfair prejudice substantially outweighed the evidence's probative value.

¶ 63 1. *The Victims' Statements*

¶ 64 Mr. Ramirez first contends that the court erred in admitting the statements of both Mr. Buchner and Mr. Ortega that they did not want to die. Sergeant Summerfield testified that Mr. Buchner kept repeating: "don't let me die. I don't want to die." Similarly, Mr. Ortega testified that he told two people who came to his aid after the shooting: "I don't want to die or I am gonna die." Mr. Ortega can also be heard on the "squad video" that was admitted into evidence saying, "I don't want to die." Mr. Ramirez contends that these statements were not relevant to any fact at issue in the case and served only to inflame the passions of the jury. He maintains that whether Mr. Buchner

or Mr. Ortega felt they were going to die or their subjective fears regarding their injuries had no bearing on any element of the charged offenses. Mr. Ramirez further asserts that both Mr. Buchner and Mr. Ortega testified about the extent of their injuries and their medical records were admitted into evidence, so the jury had ample evidence of their injuries and the admitted statements served only to elicit sympathy from the jury.

¶ 65 In response, the State devotes the majority of its brief asserting that the statements are not hearsay because they are "excited utterances." Mr. Ramirez correctly points out in his reply brief that he did not seek to exclude the statements as hearsay in the trial court and does not contend on appeal that the statements should not have been admitted because they are hearsay. Indeed, Mr. Ramriez concedes that the statements meet the excited utterance exception to the rule against hearsay. He solely contends that the trial court should not have admitted the statements because the statements were not relevant to any material issue and any relevance the statements had was outweighed by the prejudicial effect of the statements.

¶ 66 On that point, the State contends that the statements were relevant because they demonstrated that Mr. Ramirez performed a substantial step toward the commission of first degree murder, helped the jury assess Mr. Ramirez's self-defense claim, and "provided some evidence that [Mr. Ramirez] intended for the victims to die." The State made similar assertions at the hearing on the motion *in limine*, arguing that the statements would demonstrate the victims' "inherent understanding of their own injuries and they're outwardly voicing them does corroborate the evidence that will come in which will show that [Mr. Ramirez] not only caused bodily harm for the aggravated battery [with a] firearm, but also that it was a substantial step" for the charge of attempted first degree murder. In admitting the contested statements, the trial court simply stated that it found the statements "are relevant and they are excited utterances."

¶ 67 In order to sustain a conviction for attempted murder, the State is required to prove beyond a reasonable doubt that the defendant, with the specific intent to kill, commits any act which constitutes a substantial step toward the commission of murder. 720 ILCS 5/8-4 (West 2024); *People v. Valentin*, 347 Ill. App. 3d 946, 951 (2004). "The question of a defendant's intent is one of fact to be determined by the trier of fact [citation], and can be inferred from the surrounding circumstances such as the character of the attack, use of a deadly weapon, and severity of injury." *Valentin*, 347 Ill. App. 3d at 951. Aggravated battery with firearm requires the State to prove: "that (1) in committing a battery, defendant (2) knowingly or intentionally (3) caused any injury to another person (4) by means of discharging of a firearm." *People v. Cherry*, 2016 IL 118728, ¶ 20.

¶ 68 Here, the victims' statements that they did not want to die or feared dying were relevant in that they had "*any tendency* to make the existence of *any fact* that is of consequence to the determination of an action either more or less probable than it would be without the evidence." (Emphases added.) *People v. Morgan*, 197 Ill. 2d 404, 455-56 (2001). The statements were relevant to the charge of attempted murder because the State was required to show, based on the surrounding circumstances, that Mr. Ramirez acted with the intent to kill. Therefore, the victims' subjective beliefs that the nature and extent of their injuries were such that they were in imminent threat of dying are relevant to whether Mr. Ramirez acted with the requisite intent because they had a tendency to make that fact more probable than it would be without that evidence. Similarly, the evidence had a tendency to make the fact that the victims suffered an injury for the charges of aggravated battery with a firearm more probable than it would have been without the evidence. Although Mr. Ramirez contends that these issues were not contested because his primary defense was that he acted in self-defense, it is undisputed that even where a defendant admits to committing a crime, "a plea of not guilty puts all aspects of the charge in issue, and the State may prove their

case with any evidence they desire, notwithstanding the defendant's willingness to stipulate to any given fact." *People v. Jurczak*, 147 Ill. App. 3d 206, 213 (1986).

¶ 69 Mr. Ramirez next asserts that the statements should not have been admitted because they were cumulative. He maintains that the jury already had ample evidence of the victims' injuries where both victims testified about their injuries and their medical records were admitted into evidence. "Evidence is considered cumulative when it adds *nothing* to what was already before the [trier of fact]." (Emphasis added.) *People v. Ortiz*, 235 Ill. 2d 319, 335 (2009). Evidence can be corroborative and yet not cumulative. *People v. Moffett*, 2019 IL App (2d) 180964, ¶ 84 (citing *People v. Warren*, 2016 IL App (1st) 090884-C, ¶ 81). The statements here corroborate the other evidence of Mr. Buchner and Mr. Ortiz's injuries, but this does not mean the evidence adds nothing to the trial. Thus, we find that the trial court did not abuse its discretion in determining that the statements were relevant.

¶ 70 Having found that the statements were relevant, we must next determine whether the trial court should have nonetheless excluded the evidence because the danger of unfair prejudice substantially outweighed the probative value of the evidence. *People v. Hanson*, 238 Ill. 2d 74, 102 (2010).

¶ 71 Mr. Ramirez contends that the statements here were prejudicial because they served only to elicit sympathy from the jury. "All evidence is prejudicial in the sense that it compels the factfinder in one direction or the other; the issue posed by Rule 403 is when it becomes unfair[ly] so." (Internal quotation marks omitted.) *People v. Woodson*, 2023 IL App (1st) 191353, ¶ 101. " '[U]nfair[ ] prejudice' means that the evidence in question will somehow cast a negative light upon a defendant for reasons that have nothing to do with the case on trial." (Internal quotation marks omitted.) *People v. Prather*, 2012 IL App (2d) 111104, ¶ 24. As explained, the statements at issue

were probative of several material facts at trial. The evidence showed that Mr. Ramirez shot both victims and caused injuries to them. Although the evidence was "prejudicial"—as all evidence offered at trial for the purpose of proving the State's case or undermining the defendant's case must be (*People v. Zimmerman*, 2018 IL App (4th) 170695, ¶ 120)—the evidence was not unfairly so in that the evidence was not likely to "arouse feelings of sympathy, horror, or *disgust beyond those that might arise from the nature of the criminal charges against the defendant*" (emphasis added) (*Prather*, 2012 IL App (2d) 111104, ¶ 24). Accordingly, we find that the trial court did not abuse its discretion in admitting the statements.

¶ 72 2. The Photographs

¶ 73 Mr. Ramirez next contends that the circuit court erred in admitting photographs of Mr. Buchner's injuries. He maintains that the photographs were not relevant to any contested issue because the State was not required to show injury to prove the charge of attempted murder and the charge of aggravated battery with a firearm required only that the State show that Mr. Buchner suffered any injury. He asserts that the photographs were therefore not necessary to the State's case where Mr. Buchner's injuries were already proved through other sources such as his own testimony and his medical records. He contends that the gruesome nature of the photographs served only to inflame the passions of the jury.

¶ 74 As with other evidence, "[w]hether or not a jury is allowed to view photographs depicting a victim's injuries rests within the sound discretion of the trial court, and such decision will not be reversed unless it represents an abuse of discretion." *People v. Terrell*, 185 Ill. 2d 467, 495 (1998) (citing *People v. Harris*, 182 Ill. 2d 113, 151 (1998)). Gruesome or "disgusting" photographs are admissible if the photograph has sufficient probative value. *Id.* Photographs may be used "to prove the nature and extent of the injuries, the force necessary to inflict the injuries, the position, location,

and condition of the body, and the manner and cause of death; to corroborate a defendant's confession; and to aid in understanding the testimony of a pathologist or other witness." *Id.* In this case, we find that the trial court did not abuse its discretion in admitting the photographs because the photographs were relevant to State's case and were not unfairly prejudicial.

¶ 75 We find the third district's decision in *People v. Lindsey*, 2013 IL App (3d) 100625 instructive. In *Lindsey*, the defendant was found guilty of first degree murder. *Id.* ¶ 1. At the defendant's trial, the State published a photograph to the jury that depicted the victim's body at the crime scene. *Id.* ¶ 9. The defense objected to the publication of the photograph (*id.* ¶ 10), which depicted the victim "fatally wounded" (*id.* ¶ 47). The victim's "eyes were open, his body was bent at a distorted angle, and his head and face were covered in blood, as were the wall and floor behind him." *Id.* ¶ 47. The trial court found that the photograph was admissible. *Id.* ¶ 10.

¶ 76 On appeal, the defendant contended that he was denied a fair trial because the trial court allowed the "gruesome" photograph to be published to the jury. *Id.* ¶ 47. The defendant asserted that it was unnecessary for the jury to see this photograph because it was undisputed that the victim was shot several times and died from multiple gunshot wounds. *Id.* The defendant further maintained that multiple witnesses testified as to the condition of the victim's body and therefore the photographs added nothing to the testimony and served only to inflame the passions of the jury. *Id.*

¶ 77 The appellate court found that the trial court did not abuse its discretion in admitting the photograph because the photograph served to corroborate the witnesses' testimonies regarding the position, condition, and location of the victim's body and helped the jury understand the testimony. *Id.* ¶ 50. The court found that the photograph was also relevant to establish the cause and manner of the victim's death. *Id.* The court determined that it was proper for the State to introduce the

photograph to prove these matters at trial even though they were uncontested. *Id.* (citing *People v. Bounds*, 171 Ill. 2d 1, 47 (1995)). Finally, the court explained that the photograph was not unfairly prejudicial because it was not "posed or doctored" and was not autopsy photograph. *Id.* ¶ 51.

¶ 78 Here, as in *Lindsey*, the photographs of Mr. Buchner's injuries helped the jury understand the oral testimony regarding the injuries and the medical records despite the fact Mr. Ramirez did not contest Mr. Buchner's injuries at trial. *People v. Eckles*, 83 Ill. App. 3d 292, 299 (1980) (finding that the trial court did not err in admitting photographs that the defendant characterized as unnecessarily gruesome because they helped the jury understand the medical testimony despite the fact that the defendant's only defense was "insanity."). The photographs were also relevant in that they served to corroborate the other evidence of Mr. Buchner's injuries. See *Moffett*, 2019 IL App (2d) 180964, ¶ 84.

¶ 79 Mr. Ramirez maintains, however, that it was unnecessary for the State to introduce all three photographs where a single photograph would have served the purpose of depicting Mr. Buchner's wounds. He notes that one of the photographs was less graphic than the others and admitting the other two, more graphic photographs, was cumulative and prejudicial. Our supreme court has routinely rejected such contentions. For example, in *People v. Hoffman*, 32 Ill. 2d 96, 100 (1965), the supreme court found that the trial court did not abuse its discretion in admitting three photographs depicting the wound-covered, nude body of the victim from different angles despite the court's belief that that the "pictures depict a brutal and intentional crime by a sadist and are bound to arouse feelings of horror and disgust in a normal person." Similarly in *People v. Henenberg*, 55 Ill. 2d 5, 13-14 (1973), "the court held that, despite extensive oral testimony on the same subject, three photographs, one in color and two in black and white, depicting the

decomposed skull and left arm of the decedent properly were admitted to corroborate testimony as to the cause of death and identity of the victim." *People v. Foster,* 76 Ill. 2d 365, 377-78 (1979).

¶ 80 Finally, in *Foster*, the supreme court held that the trial court did not abuse its discretion in admitting four photographs which depicted the decedent's decaying and dismembered body. *Id.* 375, 78. The court acknowledged that the photographs were "quite gruesome," but it rejected the defendant's contention that the admission of all four photographs was cumulative, unnecessary, and served only to prejudice and inflame the jury. *Id.* at 375. The court reasoned that the photographs were probative of multiple issues including the manner of death, the means used, and the location of the events, and the photographs were not irrelevant even if the defendant did not dispute those issues. *Id.* at 378. The court noted that the photographs were potentially prejudicial, largely due to the fact that they accurately depicted the crime. *Id.*

¶ 81 Relying on its decision in *People v. Jenko*, 410 Ill. 478, 482 (1951), the court explained,

> " 'Evidence having a natural tendency to establish the facts in controversy should be admitted. A party cannot have competent evidence excluded merely because it might arouse feelings of horror and indignation in the jury. Any testimony concerning the details of a murder or other violent crime may have such tendencies, but manifestly this could not suffice to render it incompetent. Of course, where spectacular exhibits having little probative value are offered for the principal purpose of arousing prejudicial emotions they should be promptly excluded. But questions relating to the character of the evidence offered, and the manner and extent of its presentation, are largely within the discretion of the trial judge, and the exercise of that discretion will not be interfered with unless there has been an abuse to the prejudice of the defendant.' " *Foster*, 76 Ill. 2d at 375-76.

The court concluded that:

> "While juries are carefully instructed as to the importance of considering each item of evidence only for particular purposes and not for others, candor compels us to recognize the potentially prejudicial impact of evidence which illustrates the gruesome nature of the offense charged in cases where the criminal responsibility of the accused is at issue because of an alleged 'mental disease or defect.' Nonetheless, faith in the ability of a properly instructed jury to separate issues and reach a correct result is the cornerstone of the jury system, and defendant's brief in this court does not allege, nor does the record indicate, that the jury was improperly instructed as to the purposes for which the photographs were offered." *Id.* at 378.

¶ 82 Here, as in the cases detailed above, the photographs accurately depicted Mr. Buchner's injuries, were probative of multiple issues, and helped the jury to understand the oral testimony. See *People v. Hefley*, 109 Ill. App. 3d 74, 76 (1982) (finding that the admission of gruesome photographs is not unnecessarily cumulative simply because there is also oral testimony describing the injuries.). Accordingly, we find that the trial court did abuse its discretion in admitting the photographs.

¶ 83 3. *The Bloody Jersey*

¶ 84 Mr. Ramirez next contends that the trial court abused its discretion in admitting Mr. Buchner's bloodstained jersey into evidence. As with Mr. Ramirez's other contentions, he maintains that the jersey was not relevant to any material fact at issue because the fact that Mr. Buchner was shot was not in dispute. He further asserts that the fact of the shooting was adequately shown by other evidence such that the introduction of the actual jersey was unnecessary and cumulative and served only to inflame the passions of the jury.

¶ 85 As to the question of the probative value and prejudicial effect of blood-stained clothing, we find *Jurczak*, 147 Ill. App. 3d 206 instructive. In *Jurczak*, the defendant was found guilty of murder, but mentally ill. *Id.* at 208. At trial, the State introduced the victim's bloody clothing into evidence. *Id.* at 209. On appeal, the defendant contended that because the only issue at trial was whether he was legally sane at the time of the murder, the bloody clothes of the victim were not probative of any contested issue and were gruesome, highly inflammatory, and prejudicial. *Id.* at 212. The court first rejected the defendant's contention that the evidence lacked probative value because he admitted to committing the crime and the only issue was his mental state. *Id.* at 213. "[I]t is undisputed that a plea of not guilty puts all aspects of the charge in issue, and the State may prove their case with any evidence they desire, notwithstanding the defendant's willingness to stipulate to any given fact." *Id.*

¶ 86 The court observed that physical evidence may be admitted provided there is proof connecting the evidence with the defendant and with the crime. *Id.* at 215 (citing *People v. Miller*, 40 Ill. 2d 154, 159 (1968)). The court found that the bloodstained clothes were relevant to the crime charged and were properly admitted even though the defendant solely raised a defense of insanity. *Id.* The court noted that the clothing did not go to the jury during deliberations and was only displayed to the jury during the police officers' testimony. *Id.*

¶ 87 Here, as in *Jurczak*, Mr. Buchner's bloodstained jersey was relevant to the offenses charged even though Mr. Ramirez asserted a claim of self-defense. As explained, in order to prove Mr. Ramirez guilty of aggravated battery with a firearm, the State was required to prove that Mr. Ramirez caused an injury. The bloody jersey was relevant to that issue. See *People v. Stewart*, 122 Ill. App. 3d 546, 549 (1984) (finding that the trial court did not err in admitting the victim's bloody clothing into evidence where the defendant was charged with aggravated battery). The jersey also

served to corroborate the other evidence of Mr. Buchner's injuries, including his oral testimony. As with the photographs discussed above, merely because Mr. Buchner's injuries were established by other evidence, does not render the introduction of the jersey cumulative or unnecessary. As in *Jurczak*, the jersey did not go to the jury during deliberations and was only displayed during Mr. Buchner's testimony. The jersey was prejudicial in the sense that it depicted the effect of the crime committed by Mr. Ramirez, but this does not mean that it was unfairly so or that the prejudicial effect *substantially* outweighed the probative value of the evidence. See *People v. Adams*, 2026 IL App (4th) 250440, ¶¶ 155-163. Accordingly, we find no abuse of discretion.

¶ 88 *4. Cumulative Prejudice*

¶ 89 Finally, Mr. Ramirez contends that the trial court's errors in admitting the evidence described above individually and cumulatively deprived him of a fair trial by inflaming the passions of the jury and convincing it to convict him based on emotion rather than evidence. As explained, however, we find that the trial court did not abuse its discretion in admitting the challenged evidence. In any event, Mr. Ramirez's contention that the jury was improperly inflamed is belied by the fact that the jury found him not guilty on the attempted murder charges. *People v. McBride*, 2020 IL App (2d) 170873, ¶ 33 n. 1 ("The fact that defendant was found not guilty on two of the weapons charges, clearly evinces that the admission of the cash did not in fact prejudice the jury."). Accordingly, we find no error.

¶ 90 B. Excessive Sentence

¶ 91 Mr. Ramirez next contends that his sentence is excessive in light of his rehabilitative potential, his expression of genuine remorse and acceptance of responsibility, and his lack of criminal background. He further maintains that the trial court also failed to adequately consider his clean record while incarcerated, his documented employment history, and his alcohol

addiction. Finally, he asserts that the court improperly considered premeditation as an aggravating factor where the record does not support a finding of premeditation.

¶ 92 It is axiomatic that the trial court has broad discretion in imposing the defendant's sentence and its sentencing decision is entitled to significant deference. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). The trial court is in a better position than the reviewing court to determine the appropriate sentence and the court may appropriately weigh factors such as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). As such, this court will not substitute its judgment for that of the trial court merely because we would have weighed the mitigating and aggravating factors differently. *Id.* We presume that the trial court considered all relevant factors and any mitigating evidence presented unless the defendant makes an affirmative showing that the court did not consider the relevant factors. *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 11. "Moreover when a sentence falls within the statutory guidelines, it is presumed to be proper and will not be disturbed absent an affirmative showing that the sentence is at variance with the purpose and spirit of the law or is manifestly disproportionate to the nature of the offense." *People v. Knox*, 2014 IL App (1st) 120329, ¶ 46.

¶ 93 In this case, Mr. Ramirez was convicted of two counts of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2024)). Aggravated battery as defined in subdivision (e)(1) of section 3.05 is a Class X felony, which carries a sentencing range of 6 to 30 years' imprisonment. *Id.* § 3.05(h); 730 ILCS 5/5-4.5-25 (West 2020). Because Mr. Ramirez caused severe bodily harm in the commission of the offenses, the sentences on each count were required to run consecutively. 730 ILCS 5/5-8-4(d)(1) (West 2024). Here, the trial court sentenced Mr. Ramirez to 10 years on one of the counts and 12 years on the other, for an aggregate term of imprisonment of 22 years.

Accordingly, the sentence imposed was well within the applicable statutory sentencing range and is, therefore, presumptively valid.

¶ 94 Mr. Ramirez acknowledges this presumption, but maintains that his sentence is nonetheless excessive because the trial court failed to consider the mitigating evidence he identifies. However, Mr. Ramirez fails to identify any "affirmative evidence" in the record showing that the trial court failed to consider the factors in mitigation, and, in fact, a review of the transcript from the sentencing hearing clearly shows that the court affirmatively considered the mitigating evidence Mr. Ramirez presented, but ultimately determined that those factors did not outweigh the seriousness of offense, which this court has identified as the "most important sentencing factor." *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 123; see also *Wilson*, 2016 IL App (1st) 141063, ¶ 11 ("However, the seriousness of an offense, and not mitigating evidence, is the most important factor in sentencing.).

¶ 95 At the sentencing hearing, the court explicitly recognized that Mr. Ramirez had no criminal background and exhibited rehabilitative potential based on his lack of criminal history, educational background, and familial support. The court determined, however, that these factors did not outweigh the "grievous nature of the crimes he committed." Indeed, although a defendant's rehabilitative potential must be considered, it " 'is not entitled to greater weight than the seriousness of the offense.' " *People v. Alexander*, 239 Ill. 2d 205, 214 (2010) (quoting *People v. Coleman*, 166 Ill. 2d 247, 261 (1995)). Mr. Ramirez essentially identifies the same mitigating factors that he presented to the trial court and asks us to reweigh the factors and reduce his sentence, something this court will not do. See *Stacey*, 193 Ill. 2d at 209.

¶ 96 To the extent that Mr. Ramirez contends that the trial court did not adequately consider his struggles with alcohol, we observe that this evidence is not inherently mitigating. See *People v.*

Montgomery, 192 Ill. 2d 642, 674 (2000) ("testimony about a defendant's history of alcohol and drug abuse is not necessarily mitigating" and while the defendant "might urge this evidence in mitigation, as an explanation for his misconduct, the sentencer is not required to share the defendant's assessment of the information"). Indeed, alcohol addiction may properly be regarded as aggravating in an appropriate case. *People v. Piontkowski*, 77 Ill. App. 3d 994, 996 (1979). In addition, a criminal defendant's "remorse over his conduct is by no means conclusive on the question of erroneous sentencing." *Id.*

¶ 97 Finally, Mr. Ramirez contends that the court improperly considered premeditation as an aggravating factor where the record did not support a finding of premeditation. Mr. Ramirez maintains that the court mistakenly found that there was evidence that Mr. Ramirez left the Thirsty Beaver to retrieve his gun. When Mr. Ramirez challenged this finding in his motion to reconsider sentence, the court nonetheless found evidence of premeditation when Mr. Ramirez walked out to the patio to confront Mr. Ortega with his gun drawn.

¶ 98 It is well-settled that in determining an appropriate sentence, the court may consider the nature and circumstances of the offense. *People v. Saldivar*, 113 Ill. 2d 256, 268 (1986). Although the jury did not find Mr. Ramirez guilty of attempted first degree murder, it did find him guilty of aggravated battery with a firearm. In doing so, the jury determined that Mr. Ramirez knowingly or intentionally caused injury by discharging a firearm. *Cherry*, 2016 IL 118728, ¶ 20. The evidence demonstrated that Mr. Ramirez confronted Mr. Ortega with his gun drawn. Although Mr. Ramirez testified that his intent was only to scare Mr. Ortega, the jury nonetheless found that Mr. Ramirez acted knowingly or intentionally in discharging the gun. The court's determination that Mr. Ramriez acted with premeditation when he walked out to the patio to confront Mr. Ortega is supported by the evidence and the jury's verdict. We therefore find that Mr. Ramirez's sentence is

not excessive and the trial court did not abuse its discretion in sentencing him to a term of 22 years imprisonment.

¶ 99 III. CONCLUSION

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

¶ 101 Affirmed.