2021 IL App (1st) 191361-U

FIFTH DIVISION
September 30, 2021

No. 1-19-1361

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CHARLES MILLER, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 17 CR 1956 Honorable Michael B. McHale, Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Hoffman and Connors concurred in the judgment.

ORDER

¶ 1 ***Held:*** The circuit court properly excluded the defendant's testimony that he was seriously injured during an altercation years earlier and that this incident affected his state of mind when he shot the victim in this case. The defendant failed to properly disclose this information before trial and failed to make a proper offer of proof during trial. The defendant's 65-year prison sentence was not excessive.

¶ 2 After a bench trial, the circuit court convicted defendant Charles Miller of first degree murder and sentenced him to 65 years' imprisonment. On appeal, defendant argues that he was denied his constitutional right to a meaningful opportunity to present a complete defense. He challenges the circuit court's decision to prohibit him from testifying regarding a previous

altercation during which he was shot multiple times and how that incident affected his mental state in this case when the victim rushed towards him. Defendant contends the court excluded the evidence based on its erroneous belief that defense counsel violated a discovery obligation to disclose the self-defense testimony before trial. Defendant also argues that trial counsel was ineffective for failing to disclose this evidence. Finally, he contends that his prison sentence was excessive. We affirm.

¶ 3 BACKGROUND

¶ 4 On June 9, 2016, defendant fatally shot Angelo Davis in the face following an altercation. Defendant and his friend, Charles Williams, immediately drove away from the scene. After an investigation, Chicago police detained defendant on an investigative alert and he agreed to speak to the police. Defendant provided an alibi, which the police determined was false. The police nevertheless released defendant from custody.

¶ 5 On January 4, 2017, the police stopped defendant and his girlfriend on another investigative alert. The defendant was then arrested and charged with first degree murder.

¶ 6 In a motion for pretrial discovery under Illinois Supreme Court Rule 413, the State requested that the circuit court enter an order directing defendant to give written notice "of any defenses, affirmative or non-affirmative, which the defendant intends to assert at any hearing or trial." Rule 413 requires the defendant to "inform the State of any defenses which he intends to make at a hearing or trial and shall furnish the State with *** the names and last known addresses of persons he intends to call as witnesses, together with their relevant written or recorded statements, including memoranda reporting or summarizing their oral statements." Ill. S. Ct. R. 413(d) (eff. July 1, 1982). In defendant's answer to the State's discovery motion, he only responded that "[t]he [d]efendant may use the affirmative defense of self-defense," and elaborated

no further. The defendant also disclosed that he "may call as witnesses any persons who are named in reports tendered by the State."

¶ 7 Defendant moved *in limine* to admit material concerning Davis under *People v. Lynch*, 104 Ill. 2d 194 (1984), again stating that he "may assert self-defense as an affirmative defense to the charges." Defendant argued that Davis's record of seven prior felony convictions demonstrated that his aggressive character, and was relevant and admissible to show he was the aggressor in the confrontation. The circuit court denied defendant's motion, noting that the felonies were too remote and involved thefts of train boxcars, not violent crimes against individuals.

¶ 8 At trial, Nickita Appleton testified that on June 9, 2016, she resided at 5345 South Princeton Avenue in Chicago with her aunt and uncle, and occasionally with Davis, her cousin. Early that evening, Appleton's ex-boyfriend, Williams, called and told her that he would be dropping off some clothing she had left at his house. Five days earlier, she learned that she was pregnant by Williams.

¶ 9 While it was still light outside, Williams drove his black SUV to Appleton's residence and parked on the street immediately in front of her address with the passenger side of the SUV facing the house. Appleton identified defendant in court as the person who had been sitting in the front passenger seat that evening. Appleton exited her house and Williams removed the bags of clothing from his car and placed them on the curb. Appleton stated that the front passenger window was open because Williams took a sweater that did not belong to her and tossed it to defendant through the open window.

¶ 10 Standing next to the SUV, Williams and Appleton then had a loud, "very heated" argument regarding the unborn child. Davis, who had been standing on the other side of the street with his friend, Mario Ellis, approached Williams and Appleton and asked them to "calm it down because

all the neighbors were listening." Davis asked Appleton and Williams "to talk cleanly, *** like normal adults," and to "try talking amongst ourselves." She described Davis's tone of voice as "very calm." Defendant asked, "Who the f*** is this n****?" Appleton and Williams told defendant that Davis was Appleton's cousin and that defendant should "[b]e cool."

¶ 11 Davis, who was on friendly terms with Williams, had been carrying a gym bag. After telling Appleton and Williams to calm down, he returned to the other side of the street to talk to Ellis.

¶ 12 The argument between Appleton and Williams again escalated, and Davis returned from across the street to tell Williams that the best way to communicate with Appleton was by phone. Appleton described Davis's demeanor as calm. Davis continued to carry the gym bag.

¶ 13 Defendant, still sitting in the front passenger seat of Williams's SUV, told Davis "to mind his f*****' business" and that "his brother was trying to figure out what was going to happen with [Appleton] and the baby." Defendant said "f*** these neighbors. They gonna be nosy anyway." In response, Davis waved off defendant with his hand, saying "whatever, whatever." Davis continued to attempt to calm down Appleton and Williams. At that point, defendant started to call Davis a "b**** a** n****" multiple times. Appleton described defendant's tone as loud and aggressive.

¶ 14 Eventually, Davis dropped his gym bag near a gate in front of the house and behind Williams's SUV. Appleton stated that she never saw Davis open the gym bag and that he had simply dropped it to the ground. Appleton stuck her hand out in front of Davis in an attempt to stop him from approaching defendant. Williams pushed closed the front passenger door of his SUV so that defendant could not exit. Davis laughed, walked back to the gate, and stood in front of his gym bag. Defendant continued to call Davis a "b**** a** n****."

¶ 15 After defendant called Davis "b**** a** n****" once again, Davis responded, "I'll show you a b**** a** n****." Davis ran to the SUV and closed the front passenger door as defendant tried to exit. Appleton observed Davis had both of his hands open as he pushed the SUV door closed. She stated that Davis did not have any weapons in his hands. Davis neither struck defendant nor attempted to open the door of the SUV.

¶ 16 Appleton, standing a few feet from defendant, observed the defendant as he ducked back, grabbed a gun, and shot Davis on the right side of his face. Davis had backed away from the car about two to three feet before defendant shot him. Appleton observed that defendant fired the silver gun from his left hand. After defendant shot Davis, Williams jumped back into the SUV and drove off with defendant. When police arrived at the scene, Appleton told the officers that defendant had shot Davis. She later identified defendant as the shooter in a police photo array.

¶ 17 Ples Robinson, who resided at 5353 South Princeton Avenue, testified that he arrived home from work around 7:40 p.m. on June 9, 2016, and parked his pickup truck five to ten feet behind Williams's black SUV. His testimony essentially corroborated that of Appleton. In particular, he testified that he did not see a weapon in Davis's hands; that he heard a popping sound emanate from inside the SUV; and that he saw defendant shoot Davis in the face.

¶ 18 Mario Ellis, Davis's friend, testified that he was driving on South Princeton Avenue at around 7:40 p.m. on June 9, 2016, when he saw Davis standing on the sidewalk and got out of his car to talk to him. Ellis also corroborated the versions of the incident given by Appelton and Robinson. In particular, the testified that: he did not see Davis open the gym bag and that he did not see any weapons in Davis's hands. When Ellis approached the back of the SUV, he heard a gunshot. Davis was standing a few feet away from the front passenger door of the SUV when he was shot. Ellis stated that the gunshot came from the front passenger window. He saw the shell

casing fly into the air. He did not see who pulled the trigger. Davis was shot in the jaw. Ellis saw Williams jump into the SUV and drive away.

¶ 19 Chicago police detective Brian Daly testified that he was working with detectives Jim Carroll, Roger Murphy, and David Sipchen at around 8:30 p.m. on June 9, 2016, when he was assigned to investigate the shooting. Based on the information provided by Appleton and Robinson, Detectives Murphy and Sipchen located the black SUV on the 8000 block of South Ingleside Avenue. The detectives found a multicolored sweater in the vehicle, which Appleton identified as the sweater Williams tossed into the car earlier that evening. Appleton also provided the detectives with multiple addresses where defendant resided, stating that defendant was Williams's brother. Appleton then identified defendant in a photo array. Detective Daly identified defendant in court as the person Appleton identified in the photo array.

¶ 20 After speaking to Appleton, Detective Daly issued an investigative alert to interview and detain defendant for murder. He interviewed defendant at the police station on June 15, 2016, but released him after he provided the names of purported alibi witnesses. Detectives also met with Williams, but he refused to provide any information to police. On January 4, 2017, police arrested defendant on an investigative alert after determining his alibi was false. Ultimately, he was charged with first degree murder.

¶ 21 Dr. Eimad Zakariya, a medical examiner, testified as an expert in forensic pathology. Dr. Zakariya stated that his autopsy of Davis revealed two gunshot wounds, an entry wound to the right cheek and an exit wound to the back of the head, and that Davis died of complications resulting from the gunshot wounds. Dr. Zakariya found no evidence of soot, stipple, or muzzle imprint, which would not typically occur unless the gun was fired at close range, generally a distance of two to three feet.

¶ 22 Defendant testified on his own behalf as the sole defense witness. He stated that on the evening in question, he was a passenger in Williams's SUV as Williams drove to Appleton's house to return two garbage bags full of clothes. As defendant sat in the front passenger seat, he was looking in the center storage console for an auxiliary cord to plug in his phone. When he opened the console, he saw the handle of a gun. He had never seen the gun before, and he described it as black and six to seven inches in length.

¶ 23 After describing his initial observation of the argument between Appleton and Williams, defendant stated that he remained in the front passenger seat of the SUV, listening to music. Davis walked back across the street a second time to Williams and Appleton, where he stated, "I told you all to take [your] business elsewhere." Defendant told Davis to "let them go handle [their] business how [they're] going to handle it." Davis responded, "I'm not talking to you – excuse me. *** [Y]ou b**** a** n*****." Defendant then told Davis that he was a "b**** a** n*****."

¶ 24 Defendant saw Davis unzip the duffle bag and put his right hand inside. Defendant admitted that he did not see Davis remove anything from the bag. As Davis turned around to face defendant, he put his right hand behind his right leg. Defendant could not see if Davis was holding anything in his right hand. Davis then told defendant, "I'm going to show you a b**** a** n*****," in a loud, threatening tone.

¶ 25 Davis ran towards the front passenger door of the SUV, which had remained closed. Davis grabbed the outside door handle to pull the door open. Defendant tried to grab the inside handle of the door to close it. Defendant stated that he and Davis pulled and pushed the door for about four or five seconds. Defendant stated that Davis had the upper hand in opening the door. Defendant testified that Davis "was finna do me great bodily harm." Defendant leaned back, reached inside the center console with his left hand, and grabbed the handgun. Defendant continued to attempt

closing the door with his dominant right hand. Davis had opened the door more than one foot. Defendant reached the gun around with his left hand and shot Davis. Williams jumped back into the SUV with defendant and drove away. Defendant returned the gun to the center console.

¶ 26 Defense counsel next asked defendant if he was ever the victim of a crime. The State objected. Defense counsel stated that the question "goes to his mental process." The following colloquy occurred:

> "THE COURT: State on notice of any of this?
>
> [THE STATE]: No, Judge.
>
> THE COURT: This is the first time this is coming up, [counsel]?
>
> [DEFENSE COUNSEL]: I did not put them on notice, I didn't believe I had to put them on notice.
>
> THE COURT: Okay. Let's hear it.
>
> [DEFENSE COUNSEL]: Basically, 2011, he was a victim of multiple gunshots, and that, in my book, or he will be testifying, I believe that's what he will be testifying, that had an effect on his mental process.
>
> THE COURT: In 2011, five years before this?
>
> [DEFENSE COUNSEL]: He was victimized.
>
> THE COURT: What are the other facts behind that, where, when, how, what happened.
>
> [DEFENSE COUNSEL]: He was shot three times in the back, a couple of other places, he testified against the individual and the individual was subsequently convicted.

> However, I'm not going to be trying to put anything in about the conviction, I just want to be able to have -- elicit testimony that this had an effect upon his mental processes when put in this situation.
>
> * * *
>
> THE COURT: Yeah, you know, let me just say before I get the State's full response. Why would you not give that to the State? And yes, they are entitled to that, because you're talking about a known shooting that ended up in court that could be verified or not and you've given them no notice.
>
> Go ahead, [State].
>
> [THE STATE]: Judge, not only is the defense owed a fair trial here, but so is the State, so are the People. This is brand new to me, I have no idea the facts and circumstances under that case, I have no idea who the witnesses were, I have no idea -- any verification of it.
>
> I'm caught by surprise at this, and how an incident that occurred five years ago where it doesn't even sound like it was the same situation where he was the shooter and got returned shot at, I don't even believe it's relevant to his state of mind, this is a different situation.
>
> THE COURT: For all those reasons, you're not allowed to go there."

¶ 27 On cross-examination, defendant testified that the gun he used to shoot Davis was a semi-automatic and that he had never seen it before despite having been a passenger in Williams's car on numerous occasions and using the center console to access the auxiliary cord to plug in his phone. Defendant explained that he saw the gun in the center console because the console had no

top cover. He had never seen Williams with a gun before and did not ask Williams about the gun. Defendant stated that it was not shocking that Williams had a gun because "this is Chicago."

¶ 28 Defendant again testified that he did not see Davis pull anything out of the bag. Defendant could see the back of Davis's body, but could not see his right hand. Defendant viewed Davis the entire time. He testified that he did not see Davis holding any weapon in his hand. Davis ran towards the SUV and tried to open the front passenger door by grabbing the door handle with his right hand. Defendant tried to keep the door closed and the struggle continued for a few seconds. Defendant demonstrated for the court how he leaned back to pull the gun out of the center console and shot defendant with his left hand. Defendant stated that Davis stood right outside the car window, inches away from defendant when he shot him. Defendant acknowledged that Davis did not have a gun in his hand when he grabbed his face with both hands and fell to the ground and that he did not hear a weapon fall to the ground behind Davis.

¶ 29 When detectives initially interviewed defendant, he denied that he knew anything about a shooting involving Davis. The State introduced and played video clips of the police interview during which defendant denied he was present at the time of the shooting. Instead, he claimed that he spent the evening of June 9, 2016 with his girlfriend. Defendant insisted that the police had "nothing on [him]" and claimed that Williams never mentioned to him that Appleton's cousin had been murdered. When one of the detectives suggested that the murder was not premeditated and occurred as a result of Davis approaching the car, defendant asked, "[L]ike a self-defense thing?" Defendant never claimed self-defense and instead continued to insist that he was not involved in Davis's murder. On redirect examination, defendant testified that he was afraid to tell the police the truth regarding his claim of self-defense because "[a]ll they [are] worried about is a conviction."

¶ 30 In finding defendant guilty of first degree murder by personally discharging a firearm, the circuit court explained that defendant testified "he never saw the victim with a weapon. The victim never made a threat about a weapon. This does not support a belief that he was in fear of great bodily harm." The court found defendant's version of events illogical. For example, defendant claimed that Davis stood inches away from him when he shot him. The court stated, "[i]f that were true, there would be stippling near the wound to the victim's face per the medical examiner and there was not." Further, "the victim was using only one hand trying to pull open the door by the door handle," and that it was reasonable to infer that if defendant had really feared great bodily harm, he would have been using both hands to keep the door closed. The court found that given defendant's size, it was not believable that the victim would have won the struggle to open the car door with only one hand and "[t]he fact that he was losing to begin with does not make sense." The false alibis defendant provided to the police further rendered defendant's testimony incredible. The court noted defendant's video statements, in which he was "vehement and defiant in his denials," telling police "[y]ou don't have nothing on me." The court stated that police raised the issue of self-defense and defendant never claimed he shot Davis in self-defense. Defendant continued to lie and deny his involvement. The court stated, "[s]o the defendant's truth has changed from an angry, vehement denial, to a self-defense claim, besides from the fact that it doesn't really make sense that you lied to detectives." The court also found that defendant failed to prove self-defense, stating that defendant's testimony did not establish he subjectively believed enough danger existed to require him to shoot Davis in the face. The court found the evidence demonstrated "defendant reacted out of anger and not fear."

¶ 31 Defendant filed a motion to reconsider or, in the alternative, a motion for new trial. The posttrial motion did not include any argument that the circuit court erred by precluding evidence

of defendant's state of mind when he allegedly shot Davis in self-defense. During argument on the motion, defense counsel argued that that the "key to this whole case is the state of mind of [defendant]," but referred to "the [s]tate of mind of [Davis]," not defendant. Defense counsel did not argue that the court erred by precluding evidence of a previous shooting in which defendant was the victim. The circuit court denied defendant's motion, stating that "I didn't believe the defendant. His testimony was incredible." The court denied defendant's posttrial motion.

¶ 32 At sentencing, the State presented evidence of defendant's previous burglary conviction in 2012, which included charges of aggravated battery to a person over 60 years of age, aggravated battery in a public place, and possession of burglary tools. The State presented the testimony of a Dolton police detective who investigated the burglary. Detective Darryl Pope testified that one of the victims heard an alarm and confronted defendant. While defendant and the victim fought, the victim's 79-year-old mother went to assist her son. Defendant pushed her to the ground, causing injury. Defendant fled the scene, but returned the next day. The victim tackled defendant and held him until police arrived.

¶ 33 The State presented victim impact statements from Davis's younger sisters, one of his daughters, and the mother of his youngest child. The State argued in aggravation that "defendant's pure lack of responsibility is also aggravating," considering "the many lies he told to cover his crime," and that defendant told those lies in open court, "which is an affront to justice" and the victim. The State argued that defendant "is pure evil. There is no rehabilitation." In response, defendant laughed. The State requested the imposition of a life sentence.

¶ 34 Defendant provided no argument in mitigation other than stating that his mother was present in court and asked the court to "treat him fairly." Defendant made no statement in allocution and expressed no remorse for his actions.

¶ 35 The circuit court sentenced defendant to 65 years' imprisonment, stating, "[y]ou shot a man in cold blood because of anger and your pumped-up pride and arrogance. This was not self defense. It was an entirely avoidable situation, which makes it all the more tragic." The court found defendant to be "a very dangerous man and a serious threat to the community at large." This appeal followed.

¶ 36 ANALYSIS

¶ 37 Defendant argues that he was denied a fair trial because the circuit court precluded him from testifying that he was seriously injured during a previous shooting and that his status as a shooting victim influenced his belief that Davis posed an imminent danger of great bodily harm. He also contends that his 65-year prison sentence was excessive.

¶ 38 State of Mind Testimony Regarding Previous Shooting

¶ 39 Defendant first argues that Supreme Court Rule 413 did not require him to disclose the specific details of his testimony to the State before trial. He contends that such a rule would infringe upon his rights against self-incrimination and to privacy of communication with defense counsel. Defendant also argues that even if the failure to disclose the previous shooting to bolster his self-defense claim amounted to a discovery violation, the circuit court abused its discretion by precluding this evidence instead of ordering a continuance to allow the State time to review it. In the alternative, defendant contends his trial counsel rendered ineffective assistance by failing to disclose evidence of the previous shooting.

¶ 40 The State responds that defendant forfeited this claim by failing to include it in a posttrial motion. See *People v. Reed*, 177 Ill. 2d 389, 394 (1997); *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) ("*Both* a trial objection *and* a written post-trial motion raising the issue are required for alleged errors that could have been raised during trial."). Defendant, however, argues that the claim

was not forfeited because the evidentiary issue involved a constitutional right, even though defense counsel failed to declare a constitutional violation, citing *People v. Caffey*, 205 Ill. 2d 52, 90 (2001). He contends that the exclusion of testimony regarding his state of mind denied him his constitutional right to a meaningful opportunity to present a complete defense.

¶ 41 Our supreme court has stated that three types of claims are not subject to forfeiture for failing to include them in a posttrial motion: (1) constitutional issues that were properly raised at trial and may be raised later in a postconviction petition; (2) challenges to the sufficiency of the evidence; and (3) plain errors. *People v. Cregan*, 2014 IL 113600, ¶ 16 (citing *Enoch*, 122 Ill. 2d at 190). The constitutional issues exception is rooted in judicial economy. *Cregan*, 2014 IL 113600, ¶ 18. "If a defendant were precluded from raising a constitutional issue previously raised at trial on direct appeal, merely because he failed to raise it in a posttrial motion, the defendant could simply allege the issue in a later postconviction petition." *Id*.

¶ 42 The constitutional issue exception applies only when defendant properly raises a constitutional issue at trial. *People v. Burnett*, 2015 IL App (1st) 133610, ¶ 79. Because defendant did not assert at trial that excluding his state of mind testimony concerning the previous shooting would prevent him from his right to present a complete defense, the constitutional exception is not available to defendant. *Id*. ¶¶ 72, 76-79; see also *People v. Brown*, 2017 IL App (1st) 142877, ¶ 51. Further, defendant's reliance upon *Caffey* is misplaced because in that case, "defendant raised the issue at trial." 205 Ill. 2d at 90.

¶ 43 Forfeiture of this issue requires review under plain error. *People v. Naylor*, 229 Ill. 2d 584, 602 (2008). Defendant did not argue plain error in his opening brief, but has raised plain error in his reply brief, which is sufficient to allow us to review the issue for plain error. *People v. Ramsey*, 239 Ill. 2d 342, 412 (2010).

¶ 44 The plain-error doctrine is codified in Illinois Supreme Court Rule 615(a), which states, "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." Ill. S. Ct. R. 615(a). Plain errors may be noticed when a "clear or obvious error occurred" and "the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error," or if the error is "so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). A defendant raising a plain-error argument bears the burden of persuasion. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). The first step in plain-error analysis is to determine whether there was error at all. *People v. Walker*, 232 Ill. 2d 113, 124 (2009).

¶ 45 In this case, defendant argues that the exclusion of his testimony regarding the previous shooting was clear error and that the evidence was closely balanced as to whether he subjectively believed, reasonably or not, that Davis posed an imminent threat of great bodily harm. The defendant has failed to prove plain error under either prong. First, the circuit court's failure to include testimony regarding the previous shooting was not error because: (1) defendant failed to disclose any information regarding the shooting whatsoever prior to trial in violation of Rule 413; (2) defendant failed to make an appropriate offer of proof as to what his testimony would have been to establish the when, where, why, and how of the previous shooting for purposes of adducing any relevance to the incident in this case; and (3) the court allowed defendant to testify regarding his subjective belief that Davis "was finna do me great bodily harm."

¶ 46 Second, the evidence in this case was not closely balanced. "A person is justified in the use of force against another when and to the extent he reasonably believes that such conduct is

necessary to defend himself *** against such other's imminent use of unlawful force." 720 ILCS 5/7-1(a) (West 2018). Self-defense includes the following elements: (1) unlawful force threatened against a person; (2) the person threatened was not the aggressor; (3) the danger of harm was imminent; (4) the use of force was necessary; (5) the person threatened actually and subjectively believed a danger existed that required the use of force applied; and (6) the beliefs of the person were objectively reasonable. *People v. Gray*, 2017 IL 120958, ¶ 50. When a defendant asserts self-defense, the State has the burden to prove all the elements of the charged offense and disprove at least one self-defense element, beyond a reasonable doubt. *People v. Jeffries*, 164 Ill. 2d 104, 127-28 (1995).

¶ 47 In this case, testimony from Appleton, Robinson, and defendant himself showed that defendant interjected himself into an argument that Davis attempted to de-escalate. Appleton and Robinson testified that they did not see Davis holding a weapon in his hand at the time he ran towards Williams's SUV. Defendant testified on direct examination that he saw Davis reach into his gym bag, but never saw him pull anything out of the bag. Defendant testified that Davis hid his right hand behind his leg, but later admitted during cross-examination that Davis attempted to open the front passenger door with his right hand. He specifically testified that he did not see Davis holding any weapon in his hand. We conclude that the evidence was not closely balanced as to whether defendant subjectively believed that Davis posed an imminent threat of great bodily harm. Further, the testimony at trial does not support the conclusion that defendant's beliefs were objectively reasonable, and that evidence likewise is not closely balanced. We reject defendant's claim of plain error.

¶ 48 Forfeiture aside, the circuit court's ruling did not prevent defendant from presenting a complete defense. First, defendant failed to comply with Rule 413 and properly disclose the self-

defense claim because the claim lacked any specificity. Rule 413 required defendant to "inform the State [before trial] of any defenses which he intends to make at a hearing or trial and shall furnish the State with *** the names and last known addresses of persons he intends to call as witnesses, together with their relevant written or recorded statements, including memoranda reporting or summarizing their oral statements." Ill. S. Ct. R. 413(d) (eff. July 1, 1982). Despite this requirement, in defendant's answer to the State's discovery motion in this case, he only responded that "[t]he [d]efendant may use the affirmative defense of self-defense."

¶ 49 Second, defendant failed to make an appropriate offer of proof. During trial, defense counsel sought to elicit testimony that in 2011, defendant was shot three times in the back and a few other places, and that this had an effect upon his mental processes in this incident. Nevertheless, when the circuit court in this case asked for "the other facts behind that, where, when, how, what happened," defense counsel provided no additional information. The court did not limit defendant's ability to present an appropriate offer of proof.

¶ 50 "The traditional way of making an offer of proof is the 'formal' offer, wherein counsel offers the proposed evidence or testimony by placing a witness on the stand, outside the jury's presence, and asking him questions to elicit with particularity what the witness would testify to if permitted to do so." *People v. Pelo*, 404 Ill. App. 3d 839, 875 (2010), *abrogated on other grounds* by *People v. Veach*, 2017 IL 120649. "In lieu of a formal offer of proof, counsel may request permission from the [circuit] court to make representations regarding the proffered testimony. As a matter of the court's discretion, the court may allow such an 'informal' offer of proof." *Id.* An informal offer of proof is deemed sufficient if it informs the circuit court, with particularity, "(1) what the expert testimony will be, (2) by whom it will be presented, and (3) its purpose." *Id.* (citing *Kim v. Mercedes-Benz, U.S.A., Inc.*, 353 Ill. App. 3d 444, 451 (2004)). An informal offer of proof

is inadequate, however, when counsel "(1) 'merely summarizes the witness' testimony in a conclusory manner' or (2) offers unsupported speculation as to what the witness would say." *Id.* at 875-76 (quoting *Snelson v. Kamm*, 204 Ill. 2d 1, 23 (2003)).

¶ 51 In this case, defendant never made a formal offer of proof because defense counsel did not directly question defendant to elicit with particularity what he would testify to if permitted to do so. See *People v. Wallace*, 331 Ill. App. 3d 822, 831 (2002). Furthermore, defendant made an inadequate informal offer of proof because his counsel merely provided a conclusory statement as to what defendant would have testified to and offered unsupported speculation as to what defendant's state of mind allegedly would have been in light of the previous shooting.

¶ 52 Indeed, defendant claims for the first time on appeal that the 2011 shooting involved a "street altercation," with no further detail. When a defendant claims that he has not been given the opportunity to prove his case because the circuit court improperly barred evidence he "must provide [the] reviewing court with an adequate offer of proof as to what the excluded evidence would have been." *In re Estate of Romanowski*, 329 Ill. App. 3d 769, 773 (2002). "The purpose of an offer of proof is to disclose the nature of the offered evidence for the information of the trial judge and opposing counsel, and to allow the reviewing court to determine whether exclusion was erroneous and harmful." *Id.* " 'To be adequate, an offer of proof must apprise the [circuit] court of what the offered evidence is or what the expected testimony will be, by whom it will be presented and its purpose.' " *Id.* (quoting *Chicago Park District v. Richardson*, 220 Ill. App. 3d 696, 701 (1991)). "In the absence of an offer of proof, the issue of whether evidence was improperly excluded will be deemed waived." *Id.*

¶ 53 Here, defendant challenges the circuit court's ruling to preclude evidence of his state of mind at the time he shot Davis based on the fact he was a victim in a previous shooting. This

argument is not persuasive, because he failed to include any information regarding the previous shooting in his answer to the State's discovery motion in compliance with Rule 413. Defendant's offer of proof at trial lacked any specificity whatsoever. By failing to make an adequate offer of proof on this issue, defendant cannot now complain that the circuit court erred in failing to admit evidence. We can only speculate whether defendant was prejudiced by the failure to admit evidence of his state of mind with regard to the previous shooting and, therefore, his argument is forfeited on this basis as well.

¶ 54 Forfeiture aside, defendant's claim of evidentiary error also fails on the merits. Defendant mischaracterized the nature of the proffered testimony he sought to admit and the scope of the circuit court's ruling. The court did not rule that defendant could not testify as to his mental state when Davis rushed towards him; it merely ruled that he could not testify regarding the previous shooting and its unspecified "effect on his mental processes." Indeed, defendant specifically testified he believed Davis "was finna do me great bodily harm." The court ruled that the evidence regarding the previous shooting was not relevant here.

¶ 55 "A defendant's guilt must be established by legal and competent evidence, uninfluenced by bias or prejudice raised by irrelevant evidence." *People v. Bernette*, 30 Ill. 2d 359, 371 (1964). The determination of whether evidence was "legal and competent" hinges, in turn, on whether the evidence was relevant and admissible. Although a defendant has the right to present a defense (*People v. Manion*, 67 Ill. 2d 564 (1977)), a circuit court may prevent a defendant from introducing irrelevant or unreliable evidence. *People v. Hayes*, 353 Ill. App. 3d 578, 583 (2004). Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. R. Evid. 401 (eff. Jan. 1, 2011). And relevant evidence is admissible so long as its probative

value is not substantially outweighed by the danger that it will unduly prejudice the party against whom it is admitted. Ill. R. Evid. 403 (eff. Jan. 1, 2011).

¶ 56 In assessing the circuit court's decision regarding the admission of evidence, we must determine whether the proffered testimony would have made the question of the defendant's guilt of the charged offenses more or less probable. *Hayes*, 353 Ill. App. 3d at 583. It is axiomatic that "[i]n all criminal cases it is important that the evidence be fairly limited to the issue on trial, as collateral or extraneous matters can only mislead or prejudice a jury." *People v. Pickett*, 34 Ill. App. 3d 590, 598–99 (1975). The admissibility of evidence sought to be excluded as irrelevant is committed to the sound discretion of the circuit court, and we will only reverse a decision whether to admit evidence if the court abused its discretion. *People v. Becker*, 239 Ill. 2d 215, 234 (2010). An abuse of discretion occurs when the trial court's decision is "arbitrary, fanciful or unreasonable," or where "no reasonable person would agree with the position adopted by the trial court." *Id.*

¶ 57 Again, we find that defendant has forfeited this issue because he failed to make a proper objection at trial or in his posttrial motion on the issue of relevancy of his testimony regarding the previous shooting. See *Enoch*, 122 Ill. 2d at 186 (1988) (holding that, to preserve an error, a party must contemporaneously lodge an objection and raise the issue in a posttrial motion). Forfeiture aside, defendant's offer of proof included no details that would have allowed the circuit court to rule upon whether or not the facts involved in the previous shooting were relevant to the shooting here. For the same reason, we are unable to determine whether evidence regarding the previous shooting had "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. R. Evid. 401 (eff. Jan. 1, 2011). Likewise, we cannot determine whether the probative value of

the evidence of the previous shooting is not substantially outweighed by the danger that it would unduly prejudice the State in this case. Ill. R. Evid. 403 (eff. Jan. 1, 2011). See, *e.g.*, *People v. Sims*, 265 Ill. App. 3d 352 (1994) (excluding evidence of unrelated incident five months earlier) and *People v. Ruel*, 120 Ill. App. 2d 374 (1970) (excluding evidence of earlier altercation with another police officer).

¶ 58 Here, defendant argues that the circuit court excluded testimony that he was the victim of a life-threatening violent crime and that this experience contributed to his belief that Davis posed an imminent threat of great bodily harm, which in turn was directly relevant to his self-defense theory. However, unlike the defendants in *Sims* and *Ruel*, defendant presented absolutely no corroborating evidence whatsoever regarding his involvement in the previous shooting. In this case, although the circuit court allowed defendant to make an offer of proof to establish the facts to support what defendant's state of mind might have been in light of the earlier incident, defendant provided no supporting evidence. Further, *Sims* and *Ruel* support our conclusion that because the prior incident did not involve Davis, any evidence of the prior incident would have been irrelevant to his theory of self-defense. The circuit court did not abuse its discretion by excluding evidence of the previous shooting because it was not relevant to defendant's assertion of self-defense.

¶ 59 Defendant also argues the circuit court erred when it ruled that defense counsel violated a non-existent obligation to disclose his self-defense testimony to the State before trial. Defendant contends no such rule requiring him to disclose the previous shooting exists and that disclosure would have violated his constitutional privilege against self-incrimination.

¶ 60 "The purpose of the discovery rules is to prevent surprise or unfair advantage and to aid in the search for the truth." *People v. Sutton*, 349 Ill. App. 3d 608, 618-19 (2004). Sanctions are designed to accomplish the purpose of discovery, but the imposition of sanctions should not

encroach on a fair trial. *Id.* at 619. Sanctions should be instituted according to the circumstances of the case, not to punish a party for oversight or an attorney's errors. *Id*. Rule 413 requires the defendant to "inform the State of any defenses which he intends to make at a hearing or trial and shall furnish the State with *** the names and last known addresses of persons he intends to call as witnesses, together with their relevant written or recorded statements, including memoranda reporting or summarizing their oral statements." Ill. S. Ct. R. 413(d) (eff. July 1, 1982).

¶ 61 "A criminal defendant is constitutionally guaranteed a meaningful opportunity to present a complete defense." *People v. Ramirez*, 2012 IL App (1st) 093504, ¶ 43. When a party claims the denial of a constitutional right to present a complete defense due to improper evidentiary rulings, we review the circuit court's decision for an abuse of discretion. *Id*. In addition, the imposition of sanctions is reviewed under an abuse of discretion standard. *People v. Scott*, 339 Ill. App. 3d 565, 572 (2003).

¶ 62 Here, defendant failed to disclose any evidence of the previous shooting and he has not explained how disclosing this information and how it related to his state of mind in this case would have infringed upon his constitutional rights, other than to simply argue he was unable to present a complete defense with nothing more. Defendant attempts to have it both ways. On the one hand, he seeks to assert self-defense, but on the other, he argues the violation of his constitutional right to self-incrimination when required to disclose information leading up to the shooting of Davis. If defendant sought to present evidence of the previous shooting and how it affected his state of mind, he was required to disclose information to notify the State of his intention to present evidence of the previous shooting and how it affected his state of mind when he shot Davis. Defendant's argument that to disclose this information would have violated his constitutional right to self-incrimination is disingenuous, considering that the very notion he asserted self-defense means that

he caused the harm to the victim, but acted in self-defense. A defendant is required to prove the elements of self-defense when asserting self-defense and it follows that the defendant is expected to disclose the pertinent evidence regarding a self-defense claim in compliance with Rule 413.

¶ 63 The circuit court may properly fashion a sanction for a discovery violation when it is proportionate to the magnitude of the violation. *People v. Cunningham*, 2018 IL App (1st) 153367, ¶ 57. Here, the record establishes that the sanction imposed by the circuit court did not preclude defendant from testifying to his state of mind when he shot Davis. Defendant neither properly disclosed evidence of the prior shooting under Rule 413 nor an offer of proof during trial. The circuit court appropriately exercised its discretion in choosing the spectrum of available options and excluding the testimony, as it was not supported by any evidence whatsoever and was not previously disclosed. We find no abuse of discretion.

¶ 64 Alternatively, defendant argues that defense counsel was ineffective for not properly disclosing evidence of the previous shooting, contending it was objectively unreasonable. Defendant argues that trial counsel's comment that he was unaware of the discovery obligation showed that this violation was not a matter of trial strategy. Defendant also contends that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.

¶ 65 A criminal defendant has a right to effective assistance of counsel. U.S Const. amends. VI, XIV; Ill. Const. 1970, art. 1, § 8. A claim alleging ineffective assistance of counsel is governed by the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984); *Veach*, 2017 IL 120649, ¶ 29. Under *Strickland*, a defendant must prove both (1) deficient performance by counsel and (2) prejudice to the defendant. *People v. Colon*, 225 Ill. 2d 125, 135 (2007). To satisfy the first prong, a defendant must demonstrate counsel's performance was objectively unreasonable under

prevailing norms. *People v. Domagala*, 2013 IL 113688, ¶ 36. "To establish deficient performance, the defendant must overcome the strong presumption that counsel's action or inaction was the result of sound trial strategy." *People v. Perry*, 224 Ill. 2d 312, 341-42 (2007). To satisfy the second prong, prejudice is demonstrated if there is a "reasonable probability that, but for counsel's deficient performance, the outcome of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "A reasonable probability that the result would have been different is a probability sufficient to undermine confidence in the outcome of the proceeding." *Colon*, 225 Ill. 2d at 135. The failure to satisfy either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel. *Strickland*, 466 U.S. at 697. If it is easier to dispose of an ineffective assistance claim on the ground of lack of sufficient prejudice, that course should be followed. *People v. Albanese*, 104 Ill. 2d 504, 527 (1984).

¶ 66 Defendant argues that had trial counsel disclosed the prior shooting incident in discovery, he would have been able to present that evidence at trial. He contends that this evidence "went directly to whether [he] subjectively believed he was in imminent danger of great bodily harm or death at the time of the shooting." In this case, the circuit court heard evidence from three eyewitnesses and defendant himself regarding the events that led to the shooting of Davis. The court also heard evidence of defendant's state of mind when Davis ran towards the SUV to confront defendant.

¶ 67 Here, defendant has provided no evidentiary support explaining how the previous shooting affected his state of mind. Defendant only provided the circuit court with a conclusory, self-serving statement that he had been shot previously and that it affected his state of mind regarding the incident involving Davis. Defendant provided no evidence of similarity or whether Davis was even involved in the previous incident. Defendant's briefs on appeal provide no additional information

for this court to even consider why or how he was prejudiced when the circuit court precluded him from testifying about the previous shooting. Considering that defendant cannot establish prejudice, he therefore cannot satisfy the prejudice prong under *Strickland*, which precludes a finding of ineffective assistance of counsel.

¶ 68 Excessive Sentence

¶ 69 Finally, defendant argues that his 65-year prison sentence is excessive. He contends that the circuit court's *de facto* life sentence reflects a determination that the nature of the first degree murder offense was particularly serious and that he has no rehabilitative potential. He argues that there were substantial grounds that tended to excuse or justify his conduct, even if they did not establish a legal defense. Defendant also contends that his background did not demonstrate that he was a dangerous person or violent criminal.

¶ 70 In imposing a sentence, the circuit court must balance relevant factors, such as the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). The court has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *Id.* In addition, a court is not required to expressly outline its reasoning for sentencing, and absent some affirmative indication to the contrary (other than the sentence itself), we must presume that the court considered all mitigating factors on the record. *People v. Perkins*, 408 Ill. App. 3d 752, 762-63 (2011). Since the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the seriousness of the offense, and the presence of mitigating factors neither requires a minimum sentence nor precludes a maximum sentence. *Alexander*, 239 Ill. 2d at 214.

¶ 71 We review a sentence within statutory limits for an abuse of discretion, and we may only alter a sentence when it varies greatly from the spirit and purpose of the law, or if it is manifestly disproportionate to the nature of the offense. *Id.* at 212. So long as the circuit court does not ignore pertinent mitigating factors or consider either incompetent evidence or improper aggravating factors, it has wide latitude in sentencing a defendant to any term within the applicable statutory range. *Perkins*, 408 Ill. App. 3d at 762-63. This broad latitude means that this court cannot substitute its judgment simply because it might have weighed the sentencing factors differently. *Alexander*, 239 Ill. 2d at 212-13.

¶ 72 In this case, the applicable sentencing range for first-degree murder extended from 45 years at a minimum, including the statutory enhancement for discharge of the firearm, to natural life. 730 ILCS 5/5-4.5-20(a), 5-8-1(a)(1)(d)(iii) (West 2016). Thus, the circuit court's imposed 65-year sentence falls within this statutory range. However, defendant contends that it is both excessive and constitutionally unsound.

¶ 73 Defendant's argument that the circuit court failed to consider his rehabilitative potential is unavailing. Before imposing sentence, the court reviewed defendant's PSI, considered all the evidence presented in mitigation and aggravation, as well as other relevant statutory factors, and allowed defendant the opportunity to provide a statement in allocution, which he declined. In fact, defendant laughed when the State argued in aggravation. Significantly, defendant presented no mitigating evidence before the court imposed its sentence.

¶ 74 The circuit court noted the senseless and tragic nature of the incident. The court considered defendant's background in mitigation, but found the numerous aggravating factors and the seriousness of the crime far outweighed that mitigation. The court described defendant as "a very dangerous man and a serious threat to the community at large." The court had a superior

opportunity to evaluate defendant's credibility, demeanor, and character, and we are prohibited from substituting our judgment for that of the circuit court simply because we might have weighed the sentencing factors differently. *Alexander*, 239 Ill. 2d at 212-13. Since defendant's sentence falls within the sentencing range, we cannot say that it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Id*. at 212. As a result, the circuit court did not abuse its discretion in imposing this sentence. *Id.*

¶ 75 Defendant also contends that his sentence is an unconstitutional *de facto* life sentence pursuant to the proportionate penalties clauses of the United States and Illinois constitutions. Defendant concludes that, since his sentence is unconstitutional as applied to him, we must either reduce his sentence to the minimum or remand this matter for resentencing. We review *de novo* whether a sentence is constitutional. *People v. Taylor*, 2015 IL 117267, ¶ 11.

¶ 76 The proportionate penalties clause of the Illinois constitution provides that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. A sentence violates the proportionate penalties clause if it is "cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community." *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005) (citing *People v. Moss*, 206 Ill. 2d 503, 522 (2003)). We may determine whether a sentence shocks the moral sense of the community by considering both objective evidence and also "the community's changing standard of moral decency." *People v. Hernandez*, 382 Ill. App. 3d 726, 727 (2008).

¶ 77 The circuit court sentenced defendant to a total of 65 years in prison, including 45 years for the crime itself and an additional 20 years for the statutory firearm enhancement. Defendant is not allowed early release and must serve the entire sentence. 730 ILCS 5/3-6-3(a)(2)(i) (West

2016). The evidence at trial established that defendant fired one shot at Davis after defendant specifically testified he did not see any weapon in Davis's hands in the moments leading up to the shooting. Two other eyewitnesses also testified that Davis had no weapon in his hands and that he repeatedly attempted to deescalate the situation. The evidence supports that defendant instigated and encouraged the events that led Davis to confront him. Then defendant shot Davis in the face in cold blood and without any regard for human life. Defendant had prior convictions on his record and had a history of violent criminal activity. Though it was not at the minimum end of the range, the court's sentence was well within the sentencing range. We cannot say that defendant's sentence of 65 years is disproportionate to this offense or otherwise shocks the moral sense of the community. *Sharpe*, 216 Ill. 2d at 487. Defendant's sentence is neither excessive nor an unconstitutional *de facto* life sentence.

¶ 78 CONCLUSION

¶ 79 We affirm the judgment of the Circuit Court of Cook County.

¶ 80 Affirmed.