

No. 13-0936

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09 CR 18310(01)
	)	
CALEB CHARLESTON,	)	
	)	Honorable Dennis J. Porter
Defendant-Appellant.	)	Judge Presiding

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JUSTICE SIMON delivered the judgment of the court.  
Presiding Justice Pierce and Justice Neville concurred in the judgment.

**ORDER**

¶ 1 *Held:* There was sufficient identification evidence to prove defendant guilty of first degree murder beyond a reasonable doubt. The trial court improperly admitted a witness's out-of-court statement as substantive evidence when the witness repudiated the statement at trial, but the error did not entitle defendant to plain error relief. The trial court's strong reliance on the inadmissible statement during sentencing entitles defendant to a new sentencing hearing.

¶ 2 Patrick Stribling, 22, died as a result of the 17 gunshot wounds he suffered in a drive-by shooting. Defendant Caleb Charleston, 18 at the time, was charged with first degree murder as the state claimed that he was the driver of the vehicle used for the shooting. Defendant was tried

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before a jury, convicted, and sentenced to 75 years in prison—the maximum allowable sentence. Defendant appeals his conviction and his sentence arguing: (1) that there was insufficient evidence to prove him guilty beyond a reasonable doubt; (2) that the trial court erred by admitting a witness's hearsay statement as substantive evidence; and (3) that the sentence imposed is excessive, especially in light of the trial court's strong reliance on the inadmissible hearsay statement. We affirm defendant's conviction, vacate his sentence, and remand the case for a new sentencing hearing.

¶ 3

### BACKGROUND

¶ 4 On June 7, 2009, Patrick Stribling was located near 93rd Street and Dobson in Chicago. A green Jeep approached Stribling's location and four or five shots were fired at him from the vehicle. The Jeep then pulled away, circled the block, returned, and the passenger fired about a dozen more shots at Stribling. Stribling died. The Jeep was found abandoned nearby a short time later, and someone had apparently attempted to set it on fire. The Jeep turned out to have been stolen five days earlier.

¶ 5 The State's theory of the case was that defendant along with Jeffrey Allen, his co-defendant and the alleged shooter, killed Stribling because Stribling was cooperating with the authorities in another murder, the killing of Mark Cooper. Cooper was killed two months before Stribling, and the murders took place within a couple blocks of one another. Nine days before being killed, Stribling testified against Donate Graham and Andrew Davis before a grand jury, leading to them being charged for the Cooper murder.

¶ 6 At the trial in this case, Shirley Head testified that on the day of Stribling's murder, she was riding a bicycle near her home. She saw a green Jeep driving down the street and observed

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defendant driving the Jeep and the co-defendant "Jeff" in the passenger seat. Head had never seen defendant or co-defendant in that vehicle before. Head had known defendant for a number of years because he was a friend of Head's nephew, Donate Graham, a suspect in the Cooper murder, and she had known co-defendant for a year or two just from being around the neighborhood. Head testified that she observed the co-defendant with a pistol and defendant joked to her, "I ought to pop you," which she did not take seriously. The Jeep continued toward Dobson and, minutes later, she heard gunshots from the direction in which the vehicle traveled. Head continued on her bike in the direction of the shooting and as she was riding through an alley a block away, she again observed the Jeep. This time, the Jeep was coming down the alley real fast and she soon heard a second barrage of gunfire. She later observed Stribling's mother crying at the scene and an ambulance driving away.

¶ 7 Head admitted that she was a drug addict. On the day of the murder, she was in the area because she was looking to score drugs. She claimed that she had not done any drugs yet that day. She spoke to the police at the scene and told them that defendant was driving the vehicle and that co-defendant was the other occupant. The police also came to her residence and interviewed her and took her to the police station where she identified both defendant and co-defendant in a photo array. The officers also took her to the location where the Jeep was abandoned and she identified it as the vehicle she had seen occupied by defendant and co-defendant just before the shooting. When defendant's attorney came to interview Head two years after the shooting, she was high on cocaine and heroin after using the drugs all night and earlier in the day.

¶ 8 Darnell Payne was also called to testify. He stated that Head was his long-term girlfriend and admitted that he was also a drug addict. He was at 93rd and Dobson on the day of the

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shooting trying to obtain drugs for himself and Head. While he was at that location, he came into contact with Stribling. He borrowed Stribling's phone in an attempt to contact someone that had drugs to sell. After standing and talking to Stribling for 10-15 minutes, Payne observed a Jeep approaching them. Payne knew defendant and co-defendant through Donate Graham, who Payne considered to be his nephew. Payne saw defendant in the vehicle and began to approach because he was hoping they would have drugs to sell. Payne then observed the co-defendant produce a pistol and motion for Payne to get out of the way. Payne then ran away and heard gunshots behind him. The Jeep drove off and Payne approached Stribling who had been shot and was attempting to crawl away. Payne testified that Stribling was panicking, and that someone then screamed that the Jeep was returning, so he left Stribling and took cover behind a parked truck. Payne claimed that from cover, he again identified defendant to be the one driving the vehicle. He saw the Jeep approach Stribling for a second time and heard about 12 more shots which he could see striking Stribling. Payne testified consistently with his trial testimony when he testified before a grand jury.

¶ 9 Like Head, Payne was also intoxicated when he was interviewed by defense counsel two years after the shooting (he admitted it to defense counsel at the time of the meeting). In that interview, Payne purportedly told defense counsel that he was high on the day of the shooting. Payne also said at that meeting that he never saw defendant on the day of the shooting, and that the police kind of put words in his mouth. He also claimed that he felt pressure to give some kind of statement to the police at the station on the day of the shooting because he was feeling symptoms of heroin withdrawal and wanted to leave to get drugs. At trial, Payne emphasized that the things he said in that interview with defense counsel were not reliable, mostly because of him being high.

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Payne stated that at the time he was interviewed, he really did not want to be part of the case. He testified that he wanted to separate himself from the case for the safety of himself and his kids.

When confronted with his inconsistent statements, Payne's final testimony was that the statement he gave to the police was true, not the statement given to defense counsel.

¶ 10 Another occurrence witness, Garfield Rattray also testified at trial. He is defendant's stepfather. Rattray testified that he was sleeping in an apartment above the liquor store at 93rd and Dobson when he heard four or five gunshots. When he opened the window and stuck his head out, he saw a Jeep driving away and someone lying on the ground. Rattray also observed someone, who he identified to be Payne, picking up what he believed to be bags of drugs from around the victim. Then, he heard a lady cry out that the Jeep was coming back. Rattray saw Payne run away across the street as the Jeep came to the same spot again, and watched the passenger shoot the "guy on the ground" again about 11 or 12 times. Rattray testified that he only saw the passenger, and that the driver's face was obscured. Just after the shooting, Rattray identified the co-defendant as the shooter from a photo array. He identified the co-defendant in a line-up two months later. He did not identify the co-defendant as the shooter when asked if he could make an in-court identification. Rattray testified that he did not see the driver, and he did not see defendant, his stepson, during the incident.

¶ 11 The incident was also caught on tape by a Chicago Police POD camera and a surveillance camera from a liquor store. Payne was shown the video and he identified himself. The videos corroborate the basic events described by both Payne and Rattray, but neither of the occupants of the Jeep is identifiable. The video does have probative value, however, because it shows Payne's proximity to the shooting and gives some insight into Rattray's point of observation at the time of

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the second round of gunfire.

¶ 12 Ashmona Williams, a friend of defendant who she has known her whole life, also testified at trial. While she was in jail on an unrelated possession of a controlled substance charge, she was approached and interviewed by an assistant state's attorney and a Chicago Police Department detective. In the interview, Williams stated that she spoke with defendant on the phone before the shooting and that defendant indicated that he intended to retaliate against Stribling as a result of Stribling cooperating with the authorities in the Cooper murder case. She also stated that after the shooting the co-defendant told her and two other individuals that he had shot Stribling from a stolen car and saw Stribling still moving as they drove away so they came back around to finish him off. Williams also indicated that the co-defendant told her that there was a drug user near Stribling when he shot him. In the statement, signed by Williams on each page, she indicates that she gave the statement freely and voluntarily, that she received no benefit for giving the statement, that the statement was read aloud to her, that she understood it, and that everything in the written statement was true and correct. The statement is also signed on each page by the assistant state's attorney and the detective.

¶ 13 However, at trial, Williams repudiated her entire statement. She admitted that she met with the assistant state's attorney and the detective. She admitted that her statement to them was that she had a phone conversation with defendant and that defendant told her that he intended to hurt or kill Stribling for cooperating in the Cooper murder investigation. Then, however, Williams testified that she never actually had a phone conversation with defendant and that defendant did not tell her any of the things that she told the investigators. The State confronted Williams with the written statement. She admitted that the written statement was accurate to what

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she told the investigators and that the detective typed it as she gave it. She admitted that she then signed it, and that the investigators both signed it in her presence. She admitted that she was given the opportunity to make any changes she wanted to the statement, that she did not make any, and that she did not ask to correct the part of her statement that indicated that everything contained therein was true and correct.

¶ 14 Williams claimed at differing times during her testimony that she gave the statement because she was threatened, harassed, was scared, was told additional charges would be brought against her if she did not make a statement, and because she just wanted to get probation on her drug case. She testified that she just made up the part about defendant retaliating against Stribling. She then testified that another individual, Warren Mangum, informed her that Stribling was killed in retaliation for cooperating in the Cooper case. She later testified that it was just what everybody in the neighborhood was saying. Assistant State's Attorney Jason Poje and Chicago Police Department Detective Brian Forberg both testified that they never threatened Williams, that she was calm and treated well, and that at all times she indicated to them the statement was her own and was true.

¶ 15 The jury was instructed on first degree murder and given separate instructions on two forms of aggravation: that the murder was committed with a firearm, and that the murder was committed with the intent to prevent a witness from providing aid to a police investigation. The jury found defendant guilty of first degree murder and found that both enhancing propositions were proved. At the sentencing hearing, the trial judge took note of defendant's young age. The trial judge, however, noted defendant's criminal record, that he was on probation, and the clear intent to kill as aggravating sentencing factors. The trial judge focused strongly on the motivation

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behind the murder, finding that "assassinating witnesses on the street" for cooperating with the police "strikes right at the heart of the criminal justice system." The trial judge rejected arguments that defendant could be rehabilitated, seeing nothing but a life of crime for him, and resultingly sentenced him to 75 years in prison for committing a "horrible crime."

¶ 16 ANALYSIS

¶ 17 Defendant makes three main arguments on appeal: (1) that there was insufficient identification evidence to prove him guilty beyond a reasonable doubt; (2) that the statement of Ashmona Williams was improperly admitted at trial; and (3) that the sentence imposed by the trial court was excessive.

¶ 18 Sufficiency Of Identification Evidence

¶ 19 Defendant's first contention is that the evidence offered against him was insufficient to prove his guilt. The standard of review on a challenge to the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). It is not the reviewing court's function to retry the defendant. *People v. Betance-Lopez*, 2015 IL App (2d) 130521, ¶ 40. The trier of fact assesses the credibility of the witnesses, determines the appropriate weight of the testimony, and resolves conflicts and inconsistencies in the evidence. *People v. Johnson*, 2015 IL App (1st) 123249, ¶ 21.

¶ 20 In particular, defendant maintains that the identification evidence offered by Head and Payne was insufficient because the witnesses were drug addicts, they were presumably experiencing withdrawal symptoms, and they were impeached and proved not credible by the statements they made when interviewed by defense counsel. A positive identification of the



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accused even by a single witness is sufficient to sustain a conviction, provided that the witness had an adequate opportunity to view the accused under conditions permitting a positive identification. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). Of course, identification evidence is stronger when multiple eyewitnesses identify the defendant as the perpetrator. *People v. Standley*, 364 Ill. App. 3d 1008, 1014-15 (2006). In evaluating the reliability of an identification, we look to the following five factors: (1) the witness's opportunity to view the offender; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the criminal; (4) the witness's degree of certainty; and (5) the length of time between the crime and the confrontation. *Slim*, 127 Ill. 2d at 307-08.

¶ 21 The fact that a witness is addicted to drugs may be used at trial in an attempt to diminish the witness's credibility. *People v. Kliner*, 185 Ill. 2d 81, 130 (1998). The testimony of someone addicted to drugs should be carefully scrutinized, but it is not necessarily unworthy of belief. *People v. Morrow*, 303 Ill. App. 3d 671, 677-78 (1999). Instead, the totality of circumstances surrounding the addicted person's testimony must be considered to determine if it is believable. *People v. Smith*, 318 Ill. App. 3d 64, 73 (2000). Ultimately, it is up to the trier of fact to decide how much weight identification evidence deserves. *People v. Tomei*, 2013 IL App (1st) 112632, ¶ 59. The jury's assessment of the witnesses' identification testimony, like its resolution of all factual questions, will be upheld so long as, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have come to the same conclusion the jury did beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

¶ 22 The identification evidence offered by Head and Payne was strong, with the only not insignificant caveat being that they were drug addicts. Head testified that she had known

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defendant for many years because he was friends with her nephew. In her words, he was "good friends with [her] family." She unequivocally testified that she saw defendant driving the Jeep and that defendant even stopped and they had a conversation, so she had very ample opportunity to identify him. She saw the occupants' gun and within minutes the shooting occurred. Then, between the first and second bursts of gunfire, she encountered the same Jeep, driven by defendant, in an alley. Head identified defendant as the driver at the scene, in a photo array, and at trial.

¶ 23 As for Payne, he had also known defendant for a long time, approximately ten years. Payne too unequivocally testified that he saw defendant driving the Jeep and that he approached the vehicle hoping to get drugs. Then, when the occupants motioned for him to get out of the way, he fled and the shooting occurred. Payne even made a second identification of defendant as the driver when Payne observed defendant, still driving the vehicle, come around for the second round of shooting. Payne identified defendant as the driver of the vehicle in a photo array shortly after the shooting and then at trial.

¶ 24 Defendant's stepfather, Garfield Rattray's testimony does not directly corroborate the identification evidence offered by Head and Payne against defendant, but it does corroborate their testimony on a number of other levels. Rattray's testimony corroborated the complete narrative offered by Head and Payne. He saw the same Jeep, heard the initial shots, saw the Jeep come back around and witnessed the second round of gunfire. He also saw Payne at the scene, and Rattray and Payne's testimony was identical in all important respects. Though Rattray could not identify the driver because he had no opportunity to see who was driving, he did identify the co-defendant as the shooter—again, the same person Head and Payne identified as the shooter.

Rattray and Payne's testimony is also corroborated by video. All of the witnesses testified that they liked defendant and felt bad that they had to testify against him.

¶ 25 The only question that the jury had to consider concerning the identification was whether it was reliable on account of Head and Payne being admitted drug addicts. Both Head and Payne unequivocally testified at trial, and at numerous other times, that they were not under the influence of narcotics at the time of the shooting and that they had not used drugs that entire day. Defendant attempted to impeach Payne with the interview that Payne had with defense counsel two years after the shooting while he was admittedly high. At that meeting, Payne stated that he was under the influence at the time of the shooting. Payne also made a statement in that interview that he did not see defendant on the day of the shooting. But Payne's testimony at trial was that the things he said in that interview were not true, and that the statements he gave to the police and his testimony at trial and before the grand jury were the truth. He offered reasons why he lied in the defense counsel interview such as that he was high, that he did not want to be part of the case, and that it was for his and his family's safety. It was the province of the jury to decide whether to believe the trial testimony when confronted with the other statements.

¶ 26 Defendant claims that he also confronted Head with an inconsistent statement—that she admitted at the interview with defense counsel that she was on drugs on the day of the shooting. But the testimony does not bear that out. It appears that Head was admitting she was high when she was interviewed by defense counsel, not high on the day of the shooting. The State objected seeking a foundation as to "when" she was admitting to be high, but defense counsel never cleared that up. Regardless, even if she did make that statement to defense counsel, she consistently testified at trial that she and Payne were not under the influence at the time of the shooting and that

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they had not done any drugs on that day. Head's credibility was to be judged by the jury.

¶ 27 The other argument defendant interposes concerning the identification evidence is that Head and Payne's testimony should not be believed because they had a motive to lie. Defendant theorizes that Head's nephew (who was essentially Payne's nephew too) would have been a suspect in this case because he would not have wanted the victim to be testifying in the Cooper murder case. But that is a hollow argument with no indicia of being supported by fact. Defendant had the opportunity to, and did, ask the occurrence witnesses about their motive to lie and to implicate someone other than their nephew. The witnesses made clear that their trial testimony, subject to cross-examination, was true, and that they were begrudgingly implicating defendant. Again, whether to believe a witness's testimony and whether to believe a person's motivation to falsely testify are questions to be resolved by the jury.

¶ 28 In the end, the weaknesses in the identification evidence that defendant brings up on appeal were all presented to, and rejected by, the jury. When looking at all of the surrounding circumstances, the bare fact that Head and Payne were drug addicts is not enough to make their identification testimony *per se* unreliable. There is a lot of corroboration here, and no real reason to doubt the testimony. We hold that there was sufficient identification evidence presented to the jury to prove the proposition that defendant was driving the vehicle.

¶ 29                                   The Admission Of Williams' Statement

¶ 30 Defendant's second contention is that he was denied a fair trial when the State was permitted to introduce the statement Ashmona Williams gave when she was interviewed by an assistant state's attorney and a detective. The State concedes that the trial court improperly allowed the introduction of Williams' statement as substantive evidence because it was not based

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on her personal knowledge. See 725 ILCS 5/115-10.1; *People v. Simpson*, 2015 IL 116512,

¶¶ 32-34. But this error was not raised in a posttrial motion. The failure to assert the existence of an allegedly errant ruling in a posttrial motion results in a forfeiture of that issue on appeal.

*People v. Piatkowski*, 225 Ill. 2d 551, 564 (2007). Moreover, while defendant claims that he did object to the introduction of that evidence at trial, his objections were made on other grounds.

Defendant also argues that the statement was inadmissible for purposes of impeachment. The State does not even really respond to this argument, and does not point to any portions of Williams' testimony that affirmatively damaged its case as is required for impeaching a party's own witness.

See *People v. Cruz*, 162 Ill. 2d 314, 359-60 (1994). It should be acknowledged, however, that

Williams admits making the statement and admits that the statement she was presented with on the witness stand was true and accurate to what she told the State. She authenticated the genuineness of the statement and only repudiated its content for the first time at trial. Nonetheless, under the Code of Criminal Procedure and controlling precedent, the statement should not have been admitted as substantive evidence.

¶ 31 Defendant argues that we should reverse his conviction as a result of this error because the admission of William's statement denied him a fair trial. Defendant asks us to review the forfeited error under the plain error doctrine. Under plain error review, we will grant relief to a defendant in either of two circumstances: (1) if the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, or (2) 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. Herron*, 215 Ill. 2d 167, 178-79 (2005).

Defendant contends that he is entitled to relief under plain error review because the evidence of his

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guilt was closely balanced.

¶ 32 Under the closely-balanced prong of plain error review, the defendant must show prejudicial error. *People v. Hensley*, 2014 IL App (1st) 120802, ¶ 45. The defendant bears the burden of persuasion with respect to prejudice. *People v. Lewis*, 2015 IL App (1st) 130171, ¶ 31. Identification was the only issue in dispute. There was incontrovertible evidence that a drive-by shooting took place from a Jeep that resulted in the death of Patrick Stribling. The only real question at trial was whether defendant was driving the vehicle. Two eyewitnesses with more than ample opportunity to observe defendant contemporaneous with the relevant events testified unequivocally that defendant was indeed the driver. The State put forth unequivocal, uncontradicted testimony proving the identification. Both witnesses had at least two opportunities to observe defendant and their testimony was corroborated by Rattray and by video. The evidence was not closely balanced on the issue of whether defendant was the driver, and defendant has not met his burden of persuasion under the plain error doctrine.

¶ 33 In a similar vein, defendant maintains that he is entitled to relief from his conviction because his counsel was ineffective for failing to preserve this error—the erroneous admission of Williams' statement—for review. However, as we have explained, because the evidence was not closely balanced, defendant suffered no prejudice. Accordingly, he is not entitled to relief for ineffective assistance of counsel. See *People v. White*, 2011 IL 109689, ¶¶ 132-34.

¶ 34 Sentencing

¶ 35 Defendant's third contention is that the sentence imposed by the trial court is excessive, especially in light of the heavy emphasis the court placed on Williams' hearsay statement. After being convicted, defendant faced a sentence of 20 to 60 years plus a 15-year enhancement for a

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killing committed with a firearm. The trial court sentenced defendant, 18 years old at the time the crime was committed, to the maximum 75-year term. At the sentencing hearing, the trial judge indicated that the lengthy sentence was informed heavily by the fact that the killing was committed to keep Stribling from testifying and as revenge for him cooperating with the authorities. The trial judge referred to the putative motivation for the murder stating that "assassinating witnesses on the street" for cooperating with the police "strikes right at the heart of the criminal justice system" and referred to the offense as a "horrible crime." However, the trial judge never acknowledged that matters on which he was relying were derived wholly from a hearsay statement. Moreover, Williams' testimony at trial that the information in her statement came from "the neighborhood" could have rendered it to be double hearsay.

¶ 36 We recognize that the ordinary rules of evidence are relaxed during sentencing hearings and that even hearsay may be considered in fashioning a sentence. *People v. Spicer*, 379 Ill. App. 3d 441, 467 (2007). At sentencing, the fact that a statement is hearsay goes to the weight of the evidence rather than to whether it can be considered. *Id.* If the evidence is double hearsay, however, it should be corroborated, at least in part, by other evidence. *People v. Varghese*, 391 Ill. App. 3d 866, 873 (2009).

¶ 37 Because the trial judge considered Williams' statement as substantive evidence and relied very heavily on the putative retaliatory motive to justify a 75-year sentence, we believe the trial judge should re-sentence defendant in light of the consideration that the statement was, at best, hearsay. The only evidence of a retaliatory motive came from Williams' hearsay (or double hearsay) statement which she repudiated at trial. The trial judge should consider Williams' statement for what it is and determine what weight to give it, if any. Since the trial judge

considered the statement as substantive evidence, it is possible that too much weight was placed on the statement for the integrity of the sentence to withstand scrutiny.

¶ 38 We also note that the sentence might be considered excessive even in consideration of the motive evidence. As the trial court recognized, defendant was only 18 years old and had no violent criminal history (and little criminal history at all). Defendant was the driver of the vehicle and did not fire a weapon. The record also demonstrates that defendant had some meaningful familial support at sentencing. The trial court indicated its belief that defendant was destined for a life of crime and could not be rehabilitated, but did not explain why. In light of legal and psychological developments, we have been encouraged to view with scrutiny life sentences and essentially *de facto* life sentences for youthful offenders. See, e.g., *Miller v. Alabama*, --- U.S. ---, 132 S. Ct. 2455 (2012). Based on the foregoing, we remand for a new sentencing hearing to be conducted consistent with this order.

¶ 39 The final issue on appeal concerns the proper amount of fees assessed against defendant. That issue should also be considered on remand.

¶ 40 CONCLUSION

¶ 41 Accordingly, we affirm in part, vacate in part, and remand.

¶ 42 Conviction affirmed. Sentence vacated. Cause remanded for a new sentencing hearing.