2015 IL App (1st) 13-3403-U

THIRD DIVISION
November 10, 2015

No. 1-13-3403

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the Circuit Court
Plaintiff-Appellant,	)	of Cook County, Illinois,
	)	Criminal Division.
v.	)	
	)	No. 12 CR 7317
PHIL HALL,	)	
	)	The Honorable
Defendant-Appellee.	)	James B. Linn,
	)	Judge Presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Presiding Justice Mason and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: The admission of a minor's out-of-court identification of the defendant as the offender constituted plain error where the evidence at the defendant's trial was closely balanced, thereby requiring remand for a new trial. The defendant's constitutional challenge to the automatic transfer provision of the Juvenile Court Act (705 ILCS 405/5-130 (West 2012)) is meritless in light of our supreme court's decision in *People v. Patterson*, 2014 IL 115102.

¶ 2 Following a bench trial in the circuit court of Cook county, the 16-year-old defendant, Phil Hall, was found guilty of aggravated battery with a firearm and aggravated discharge of a firearm, and sentenced to concurrent terms of 15 and 10 years' imprisonment respectively. On appeal, the defendant argues that: (1) the trial court erred by admitting inadmissible hearsay

testimony of a child witness's out-of-court identification of him as the shooter; (2) the State failed to prove him guilty beyond a reasonable doubt; and (3) the automatic transfer provision of the Illinois Juvenile Court Act (705 ILCS 405/5-130 (West 2012)) under which he was tried and sentenced as an adult violated the Eighth Amendment of the United States Constitution (U.S. Const., amend. VIII), the Proportionate Penalties Clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11), and state and federal due process rights (U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, § 2). For the reasons that follow, we reverse and remand for a new trial.

¶ 3 I. BACKGROUND

¶ 4 The record before us reveals the following facts and procedural history. On March 14, 2012, the 16-year-old defendant was arrested for his involvement in the March 13, 2012, shooting of five victims: 11-year-old Tyshaun Grant (Tyshaun), 7-year-old Tyreon Grant (Tyreon), 13 year-old Terry Currin (Terry), 14-year-old Romaurre Jackson (Romaurre) and 13-year-old Edward Curtis (Edward). The defendant was subsequently indicted on a 38-count charge, including: 20 counts of attempted first degree murder (720 ILCS 5/8-4(a) (West 2010); 720 ILCS 5/9-1(a)(1) (West 2010)), 9 counts of aggravated battery with a firearm by a person 18 years or older (720 ILCS 5/12-3.05(b)(1) (West 2010)),[1] 2 counts of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2010)) and 7 counts of aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2010)).

¶ 5 A. Motion to Suppress Identification

¶ 6 Prior to trial, the defendant filed a motion to suppress all identification testimony, arguing,

[1] These charges were raised even though it was undisputed at all times that the defendant was 16-years old when the offense was committed.

inter alia, that the photo arrays and the lineup from which he was identified as the shooter were improperly suggestive, and that the police had deliberately obtained the identifications through coercive and suggestive tactics. The following evidence was adduced at the hearing on the defendant's motion to suppress. Chicago police detective Clifford Martin first testified that on March 13, 2012, he was assigned to investigate the shooting at 59th Street and Stewart Avenue. Once at the scene, Detective Martin spoke to several witnesses, including one of the victims, 13-year-old Edward. Edward told the detective that there were two offenders, one of whomwas the shooter, and that they both wore black clothes. Detective Martin admitted that Edward did not provide any further description of the offender before he was taken to the police station that night. Once there, where he was joined by his mother, Edward told the detective that the shooter was a 5' 7" to 5' 9" tall African American male who was between 17 and 19 years old. Edward also told the detective that he "knew [the shooter] frequented the area of 58th [Street] and Union [Avenue]," and that "he had seen [him] on the street the prior day in a street fight." Detective Martin stated that based solely on this information, he used his computer to generate three photographs of potential offenders, which he then showed to Edward.

¶ 7 This three-photograph spreadsheet was presented to the court and is part of the record on appeal. It shows a photograph of the defendant, followed by photographs of two other African American males. Of the remaining two, one (the last in the spreadsheet) is strikingly younger and unmistakably has no dreadlocks. When questioned about the suggestiveness of this spreadsheet, Detective Martin admitted that he did not compile a formal photo array (which should include six photographs of potential offenders), but alleged that he "did not have enough information to do so."

¶ 8 Detective Martin further averred that once Edward picked the defendant from this three-

photograph spreadsheet, he passed the defendant's photograph to Detectives William Meador and Mark Del Favero, who used it to produce formal photo arrays.

¶ 9 Detective Martin next testified that he was responsible for putting together a lineup that was conducted for several witnesses on March 14, 2012. A photograph of that lineup was presented to the trial judge who, *sua sponte*, took judicial notice of the fact that the lineup was comprised of five individuals, of which the defendant, who was the first person in the lineup, was the only one with braided, long curled hair. The court noted that everyone else had short hair. In addition, the photograph revealed, and Detective Martin conceded, that two of the remaining four individuals were of a much heavier build than the defendant. In addition, the individual in position number five was drastically shorter than the rest.

¶ 10 When questioned about the fact that the defendant was the only individual in the lineup with dreadlocks, Detective Martin admitted that when he spoke to Terry, Romaurre and Edward prior to the lineup, they told him that the offender had braids or dreadlocks. The detective then claimed that the individuals that he used in the lineup were the only African American males in the appropriate age and height range that were available to him from the pool of offenders in custody, "in the entire city of Chicago."

¶ 11 Detective Martin admitted that while the defendant was 16 years old, the other individuals in the lineup were 17,18, 19 and 25. In addition, he acknowledged that although the description of the defendant's height was between 5'7 and 5' 9", once the defendant was placed into custody it became apparent that he was in fact 5'11" tall.

¶ 12 Detective Martin also testified that the lineup was shown separately to four victims: Romaurre, Edward, Terry and Tyreon. Three of the victims (14-year-old Romaurre, 13-year-old Edward and 13-year-old Terry) positively identified the defendant, while the fourth (7-year-old

Tyreon) did not. Detective Martin acknowledged that the witnesses were friends, but testified he did not know whether they came to the police station together.

¶ 13 Chicago police detective William Meador next testified that he was responsible for creating two formal photo arrays including the defendant's photograph. At about 11:40 p.m., on March 13, 2012, Detective Meador visited 11-year-old Tyshaun, at Comer's Children's Hospital. In the presence of Tyshaun's mother, he showed Tyshaun one of the formal photo arrays, from which Tyshaun identified the defendant.

¶ 14 On the following morning, together with his partner, Detective Meador proceeded to Romaurre's and Terry's elementary school where he showed them the other photo array. Detective Meador testified that the minors were shown the photo array separately, and in the presence of the detectives and their school principal. Detective Meador admitted that only Romaurre identified the defendant, while Terry did not.

¶ 15 After hearing all of the testimony, the trial court denied the defendant's motion to suppress the identifications. The court found that there was no "purposeful conduct by the police to go out of their way to rig the line-up *** or the photo array."

¶ 16 B. Bench Trial

¶ 17 In June 2013, the defendant proceeded with a bench trial at which the following evidence was adduced. Tyshaun testified that at about 3 p.m. on March 13, 2012, he was catching snakes with his younger brother Tyreon, and three friends, Terry, Edward, and Romaurre, on a hill next to the train tracks at 59th Street and Stewart Avenue. As the boys were getting ready to leave, Romaurre, who headed down the hill towards 59th Street first, said, "Hey, y'all somebody's coming." Tyshaun looked around but could not see anyone at first. A few moments later he observed two men standing at the bottom of the hill. One "just stood there looking around to see

if anyone was coming," and the other, whom Tyshaun later identified as the defendant, began walking up the hill, and started to shoot. Tyshaun stated that the defendant was about 15 feet away when he saw him.

¶ 18 Tyshaun and his friends fled down the hill in the opposite direction towards the viaduct. Tyshaun testified that he was shot in the back but at first did not realize it and kept running. A few seconds later he "felt out of breath" and realized that he had been shot. The bullet which had hit him in the back had exited through his chest. Tyshaun and his friends hid behind a church on the corner of 59th Street and Princeton Avenue, and waited for the police and ambulance to arrive. Tyshaun eventually passed out and woke up in Comer Children's Hospital, where he was treated for 15 days.

¶ 19 Tyshaun further averred that on March 13, 2012, the police came to the hospital and showed him photographs of potential suspects. Tyshaun acknowledged that his parents were present and that the police asked him to sign a piece of paper before viewing the photographs. Tyshaun then identified the defendant from the photo array "because of his face."

¶ 20 On cross-examination, however, Tyshaun averred that the defendant's face was covered by a dark bandana. On redirect, Tyshaun reiterated that from the time he saw the defendant coming up the hill and started running, which was a matter of seconds, he never observed the defendant without the bandana. Tyshaun clarified that he saw the defendant's face only from "about half way up the bridge of his nose." In addition, he averred that the defendant's accomplice, whom he described as the "lookout," also wore black clothes and had his face covered.

¶ 21 On cross-examination, Tyshaun also averred that when he identified the defendant from the photo array in the hospital he was in pain and taking medication. He also stated that his friends visited him in the hospital after he spoke to the police.

¶ 22 At trial, Tyshaun identified People's exhibit No. 1 as the photospread advisory form he signed and the photo array from which he selected the defendant.[2] Tyshaun also identified People's exhibit No. 2, as four photographs of the scene of the crime, showing the sidewalk at the bottom of the wooded hill from which the shooter emerged and the train tracks on top of that hill where Tyshaun and his friends stood when the shooting began.

¶ 23 Terry Currin next testified consistently with Tyshaun. He stated that after he and his friends had been catching snakes for a while, Romaurre ran down the hill next to the train tracks and then came running back up saying "here comes somebody." Romaurre told his friends that he saw "two guys and that they are wearing all black." Terry did not think "this was a good sign."

¶ 24 Terry testified that he then observed two men, one of whom he later identified as the defendant. Terry saw the defendant from a distance of about 15 to 20 feet, and stated that the defendant wore all black with a bandanna or a scarf covering his face, including his nose. Terry averred that as soon as he saw the defendant pull out a gun, he began running in the opposite direction, after which he heard about five to eight gunshots. Terry did not see the defendant after he started running and never turned around to see whether the defendant actually made it up the hill, or what direction he went in afterwards.

¶ 25 Once he realized that Tyshaun was injured, Terry waited with Tyshaun until the police and ambulance arrived. He then accompanied the detectives to the police station. On cross-examination, Terry acknowledged that when he spoke to the police at the scene of the crime, he

[2] The photo advisory form states that Tyshaun understands: (1) that the suspect may or may not be in the photo array; (2) that he is not required to make an identification; and (3) that he should not assume that the person showing him the photo array knows which person was the suspect.

never game them a physical description of the shooter, his skin color, height, hair style, or anything else.

¶ 26 Instead, Terry testified that on the following morning, March 14, 2012, the police came to his school and asked him to look at several photographs. Terry stated that he was in the principal's office together with Romaurre and Edward when the police showed them the photographs. On cross-examination, he reiterated that all three friends were present in the room when they were asked to look at the photographs. Terry stated that he did not identify anyone from those photographs because he was scared. On cross-examination, Terry was asked to clarify why he was scared, and he stated that "he did not know what was going on."

¶ 27 Terry also acknowledged that later that night, after dinner, he went to the police station where he identified the defendant from a lineup. Terry acknowledged that he was accompanied by his mother at the police station and that before he viewed the lineup he signed a lineup advisory form.

¶ 28 However, Terry also stated on cross-examination that by the time he viewed the lineup, he had already seen the defendant's photograph twice that day: the first time in the morning in the principal's office, and the second time in the evening at the police station prior to viewing the lineup. Terry explicitly testified that while he was waiting to view the lineup in the police station that night, the detectives showed him the photo array they had already shown him in school earlier that same morning. On redirect examination, Terry admitted, however, that there were no markings on the photo array.

¶ 29 At trial, Terry identified People's exhibit No. 3 as the lineup advisory form that he signed, People's exhibit No. 4A as the photograph of the lineup he viewed, and People's exhibit No. 4B as a close-up photograph of the defendant from that lineup.

¶ 30 The State next called Romaurre Jackson. He testified that he was on top of the train tracks heading down the hill, when he saw two individuals on the sidewalk, one of whom he later identified as the defendant. Romaurre testified that the defendant was wearing what looked like a turtleneck because it covered part of his face, from the nose down, and that the other man was wearing a black hoodie.

¶ 31 Romaurre testified that when he first observed the defendant standing on the sidewalk, he looked as if he was "just standing and minding his own business." Romaurre explained that although he was slightly apprehensive, and warned his friends, they nonetheless decided to go down the hill towards the two men on their way home. Romaurre stated that at that point, the defendant must have observed them because he pulled out a gun and started to shoot. Romaurre immediately turned around and started running up the hill, whereupon he heard five or six gunshots. He stopped running about "five seconds later," when he saw blood on Tyshaun's shirt.

¶ 32 On cross-examination, Romaurre acknowledged that he never turned around as he was running, and never saw whether the shooter came up the hill after them, or in what direction he proceeded.

¶ 33 Romaurre remained with Tyshaun until the police and ambulance arrived. Romaurre then spoke to the police at the scene and accompanied them to the police station. When asked on cross-examination, whether he gave a physical description of the offender to the police at the scene of the crime or any time thereafter, Romaurre testified that he only told police that the shooter had "something around his face, and that he could not really see his face only the top part of his face."

¶ 34 Romaurre also testified that on morning after the shooting, on March 14, 2012, two police

detectives came to his school and asked him to look at a photo array, whereupon he identified the defendant as the shooter "because of his eyes." Romaurre stated that Terry was not there when he identified the defendant. Later that evening, Romaurre again picked the defendant from a lineup at the police station.

¶ 35 At trial, Romaurre identified People's exhibit No. 5 as the photospread advisory form he was asked to sign before looking at the photo array, and the photo array containing his signature next to the circled photograph of the defendant.

¶ 36 Chicago police detective Mark Del Favero next testified that together with his partner, Detective Meador, he conducted several photo arrays as part of the investigation. The detectives met 11-year-old Tyshaun at 11:40 p.m. on March 13, 2012, at Comer Hospital. According to Detective Del Favero, Tyshaun was able to speak to them despite of the treatment he was undergoing. The detective explained that Tyshaun's mother was present and that he had Tyshaun sign the photospread advisory form before showing him the photo array. Detective Del Favero testified that Tyshaun picked the defendant from that photo array, and then identified People's exhibit No. 5, as the advisory form and the photo array.

¶ 37 On cross-examination, Detective Del Favero acknowledged that he spoke to Tyshaun at Comer Hospital at 5 p.m., very soon after the shooting, but did not present Tyshaun with any photographs then. Detective Del Favero, averred, however that the photo arrays had not been compiled by then.

¶ 38 Detective Del Favero further testified that on the morning of March 4, 2012, he conducted two more photo arrays for Romaurre and Terry. He explained that together with his partner he met the two minors at their elementary school. Prior to doing so, the detective spoke to the school principal. Both minors were asked to sign photospread advisory forms before they were

shown the photo arrays. Detective Del Favero admitted that the minors were together when they signed the advisory forms, but averred that they were separated before they were shown the photo array.

¶ 39 Detective Del Favero acknowledged that only Romaurre identified the defendant from the photo array. He also claimed on cross-examination, that neither Romaurre nor Terry ever told him that they were afraid of making an identification from that photo array.

¶ 40 Detective Clifford Martin next testified consistently with his testimony at the motion to suppress hearing. He stated that on the evening of March 13, 2012, he spoke to 13-year-old Edward at the police station. After Edward gave him an approximate height, weight and area where he had seen the offender frequenting, the detective entered the information into his computer and obtained three photographs. The detective showed the three photographs to Edward, from which Edward identified the defendant. Detective Martin then had Detectives Meador and De Favero compile "additional photo arrays" that were shown to other witnesses.

¶ 41 On March 14, 2012, the defendant was arrested and placed in a lineup. Detective Martin showed the lineup separately to Romaurre (at 9:12 p.m.), Terry (at 9:19 p.m.) and Edward (at 10:36 p.m.). All three identified the defendant as the shooter. According to Detective Martin, all three minors were accompanied by parents or guardians, and were asked to sign an advisory form prior to viewing the lineup. The advisory forms were admitted into evidence as exhibits.

¶ 42 On cross-examination, Detective Martin acknowledged that the only description he received of the offender prior to the lineup was that he was a 17 or 18 year-old, African American male, 5'6" to 5'7" tall, dressed in dark clothing. Detective Martin admitted that he did not obtain a description of the offender from Romaurre or Terry until he met them at the police station on March 14, 2012. On cross-examination, Detective Martin further acknowledged that

the witnesses told him that the shooter was accompanied by another individual, and that their description of that other individual was "substantially the same" as that of the shooter. He denied, however, that the witnesses ever told him that the offender wore a mask.

¶ 43 On cross-examination, Detective Martin acknowledged that he was responsible for putting together the lineup viewed by the witnesses and identified People's exhibit No. 4 as a photograph of that lineup. Detective Martin admitted that of the five men in that lineup the defendant is the only one with braids, and the only one with substantially more hair. Detective Martin further acknowledged that some of the individuals in the lineup have different body types and that the individual in position five is considerably shorter than the rest. Detective Martin also acknowledged that according to protocol it was not necessary to have five individuals in the lineup and that therefore he did not need the individual in position five. He explained that a lineup must be composed of an offender plus at least three non-offenders. He averred, however, that a "perfect lineup" includes five individuals, and that this was the reason he included the substantially shorter individual in position five in the lineup. In addition, Detective Martin denied showing the minors a photograph of the defendant at the police station on March 14, 2012, prior to the lineup.

¶ 44 The parties next stipulated that if called to testify a Chicago police evidence technician would state that at about 4:40 p.m. on March 13, 2012, he processed the scene of the shooting at 356 West 59th Street where he recovered and inventoried five expended shell 9-milimeter Luger cartridge cases, photographed and marked them.

¶ 45 After the State rested, the defense called Latoya Brown (Latoya) the defendant's sister as an alibi witness. Latoya testified that on March 13, 2012, she was living with the defendant, her mother, and her four children (ages two, seven, eleven and thirteen) at 5941 South May Street in

Chicago. Latoya testified that at the time of the shooting, she was at home with the defendant, who was not in school because he had been suspended for a dress code violation. Latoya specified that between 3:30 p.m. and 4 p.m. she and the defendant were on her front porch waiting for her three older children to return from school. Latoya explained that her children took two buses, one which arrived in front of her home between 3 p.m. and 3:15 p.m., and the other between 3:30 p.m. and 4 p.m.

¶ 46 On cross-examination, Latoya acknowledged that her youngest child (the two-year old) attends a daycare program, which ends between 4 p.m. and 4:30 p.m. Latoya explained, however, that on March 13, 2012, her cousin was responsible for picking up her two-year old from daycare, while she waited on the porch for her older children. Latoya admitted that on the following day, she was not at home when the defendant was arrest at about 4 p.m., because she went to pick up her two-year old from daycare. Latoya explained, however, that she and her cousin have an arrangement about pick-ups because they have children at the same daycare. According to this arrangement, some days Latoya picks up both of the toddlers, and others her cousin picks up both children, while Latoya waits for her older children to come home by bus.

¶ 47 On cross-examination, Latoya acknowledged that when she returned home on March 14, 2012, and learned that the police were there to arrest the defendant, she did not tell them that he had been with her the day before. Latoya stated, however, that she never had the opportunity to do so.

¶ 48 After closing arguments, the trial court found the defendant not guilty of: (1) attempted murder (counts 1 through 20) and (2) aggravated battery with a firearm by a person 18 years or older (counts 23 through 31). The court, however, found the defendant guilty of aggravated battery with a firearm (counts 21 and 22) and aggravated discharge of a firearm for shooting at

children (counts 32 through 38). The defendant was subsequently sentenced to concurrent terms of 10 and 15 years' imprisonment for those convictions respectively. He now appeals.

¶ 49 II. ANALYSIS

¶ 50 On appeal, the defendant contends that: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) that the trial court erred by admitting inadmissible hearsay testimony of Edward's out-of-court identification; and (3) that the automatic transfer provision of the Juvenile Court Act (705 ILCS 405/5-130 (West 2012)), which subjected him to mandatory adult sentencing is unconstitutional. We will address each in turn.

¶ 51 A. Edward's Out-of-Court Identification of the Defendant

¶ 52 The defendant first asserts that court improperly considered the testimony of Detective Martin that Edward had identified the defendant from photographs and from a lineup as the person who shot at him and his friends. Because Edward did not testify at trial, the defendant asserts that the detective's testimony regarding Edward's identification of the defendant was: (1) inadmissible hearsay; and (2) testimonial evidence which violated the defendant's right to confrontation under the United State Supreme Court's decision in *Crawford v. Washington*, 541 U.S. 36 (2004).

¶ 53 The State initially argues and the defendant concedes that he has forfeited this issue for purposes of appeal by failing to object to it at trial and by failing to raise it in his posttrial motion. See *People v. Thompson*, 238 Ill. 2d 598, 611-12 (2010) ("To preserve a claim for review, a defendant must both object at trial and include the alleged error in a written posttrial motion") (citing *People v. Enoch*, 122 Ill. 2d 176, 186-87 (1988)); see also *People v. Allen*, 222 Ill. 2d 340, 352 (2006) (noting that "even constitutional errors can be forfeited"). The defendant, nevertheless, urges us to consider his claim under the plain error doctrine. See Ill. S. Ct. R.

615(a) (eff. Jan. 1, 1967) ("Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court"); *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005).

¶ 54 The plain error doctrine "bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved claims of error in specific circumstances." *Thompson*, 238 Ill. 2d at 613 (citing *People v. Averett*, 237 Ill. 2d 1, 18 (2010)). Specifically, the plain error doctrine permits "a reviewing court to consider unpreserved error when (1) 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 (2) a clear or obvious error occurred and that 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) (citing *Herron*, 215 Ill. 2d at186-87); see also *Thompson*, 238 Ill. 2d at 613; see also *People v. Adams*, 2012 IL 111168, ¶ 21. Under either prong of the plain error doctrine, the burden of persuasion remains on the defendant. *People v. Bowman*, 2012 IL App (1st) 102010, ¶ 29 (citing *People v. Lewis*, 234 Ill. 2d 32, 43 (2009)).

¶ 55 "The first step of plain-error review is to determine whether any error occurred." *Lewis*, 234 Ill. 2d at 43; *Thompson*, 238 Ill. 2d at 613; see also *People v. Wilson*, 404 Ill. App. 3d 244, 247 (2010) ("There can be no plain error if there was no error at all."). This requires "a substantive look" at the issue raised. *People v. Johnson*, 208 Ill. 2d 53, 64 (2003). We will therefore first review the defendant's claim to determine if there was any error before considering it under plain error.

¶ 56 At the outset we note that our supreme court has repeatedly directed that, when reviewing the

admissibility of out-of-court statements into evidence, like those challenged here by the defendant, we must first determine whether those statements " 'pass[ ] muster as an evidentiary matter,' " before we may consider any constitutional objections, including " '*Crawford*-based confrontation clause claims.' " *People v. Melchor*, 226 Ill. 2d 24, 34 (2007) (quoting *In re E.H.*, 224 Ill. 2d 172, 179 (2006)). "This is the only analytical 'flow chart' that comports with the rule that courts must avoid considering constitutional questions where the case can be decided on nonconstitutional grounds.' " *Melchor*, 226 Ill. 2d at 34, (quoting *In re E.H.*, 224 Ill. 2d at 179-80). Accordingly, we first consider whether Detective Martin's testimony regarding Edward's photo array and lineup identifications of the defendant was properly admitted hearsay evidence. For the reasons that follow, we find that it was not.

¶ 57 Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. *People v. Gonzalez*, 379 Ill. App. 3d 941, 954 (2008). As such " '[t]estimony by a third party as to statements made by another nontestifying party identifying an accused as the perpetrator of a crime constitutes hearsay testimony and is inadmissible.' " *People* v. *Yancy*, 368 Ill. App. 3d 381, 385 (2005) (citing *People v. Lopez*, 152 Ill. App. 3d 667, 672 (1987)). "The fundamental reason for excluding hearsay is the lack of an opportunity to cross-examine the declarant." *Yancy*, 368 Ill. App. 3d at 385; see also *People v. Jura*, 352 Ill. App. 3d 1080, 1085 (2004) (citing *People v. Shum*, 117 Ill. 2d 317, 342 (1987)); see also *People v. Dunmore*, 389 Ill. App. 3d 1095, 1106 (2009). A trial court has discretion to determine whether statements are hearsay, and a reviewing court will reverse that determination only for an abuse of discretion, *i.e.*, where the trial court's ruling is "arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court." *People v. Leak*, 398 Ill. App. 3d 798, 824 (2010); see also *People v. Spicer*, 379 Ill. App. 3d 441, 449 (2008).

¶ 58 In the present case, the State concedes that Detective Martin's testimony regarding Edward's lineup identification of the defendant as the shooter was inadmissible hearsay that should not have been considered by the trial court. The State, nevertheless, maintains that the detective's testimony regarding Edward's photo identification of the defendant was admissible as an exception to the hearsay rule showing the course of the police investigation. We disagree.

¶ 59 Statements are not inadmissible hearsay when they are offered for the limited purpose of showing the course of a police investigation, but only where such testimony is necessary to fully explain the State's case to the tier of fact. *People v. Jura*, 352 Ill. App. 3d 1080, 1085 (2004); see also *People v. Edgecomb*, 317 Ill. App. 3d 615, 627 (2000); see also *People v. Warlick*, 302 Ill. App. 3d 595, 598-99 (1998) (quoting *People v. Simms*, 143 Ill. 2d 154, 174, (1991)). Accordingly, a police officer may testify about a conversation that he had with an individual and his actions pursuant to the conversation to recount the steps taken in his investigation of the crime, and such testimony will not constitute hearsay, since it is not being offered for the truth of the matter asserted. *People v. Hunley*, 313 Ill. App. 3d 16, 33 (2000) (citing *People v. Pryor*, 181 Ill. App. 3d 865, 870 (1989)). However, the police officer may not testify to information beyond what was necessary to explain the officer's actions. *Jura*, 352 Ill. App. 3d at 1085; *Hunley*, 313 Ill. App. 3d 16, 33 (2000). As such our courts have repeatedly held that the State may not use the limited investigatory procedure exception to place into evidence the *substance* of any out-of-court statement that the officer hears during his investigation, but may only elicit such evidence to establish the police investigative process. See *Hunley*, 313 Ill. App. 3d at 33-34; *Jura*, 352 Ill. App. 3d at 1085; see also *People v. Gacho*, 122 Ill. 2d 221, 248 (1988) (holding that it was permissible for a police officer to testify that after he spoke to the victim he went to look for the defendant, but indicated that it would have been error to permit the officer to testify

to the *contents* of that conversation). As we explained the rationale for this principle in *People v. Trotter*, 254 Ill. App. 3d 514, 527 (1993):

> "[T]here is a distinction between an officer testifying to the fact that he spoke to a witness without disclosing the content of that conversation and an officer testifying to the content of the conversation. [Citation.] Under the investigatory procedure exception, the officer's testimony must be limited to show how the investigation was conducted, not place into evidence the substance of any out-of-court statement or conversations for the purpose of establishing the truth of their contents. [Citation.] The police officer should not testify to the contents of the conversation [citation], since such testimony is inadmissible hearsay. [Citation.]").

¶ 60 In the present case, contrary to the State's position, there can be no doubt that Detective Martin's testimony that Edward was the first to identify the defendant was offered for the truth of the matter asserted and was not necessary to describe the course of the police investigation. The fact that the police compiled photo arrays for Tyshaun, Terry and Romaurre needed no background explanation, as it would not be unusual for police to show photo arrays to witnesses or victims. What is more, Detective Martin could have simply testified that after speaking with Edward he obtained information based on which he asked Detectives Meador and Del Favero to "compile additional photo arrays," including the defendant's photograph. The detective's statements, that Edward actually identified the defendant from the photo array and subsequently from the lineup as the one who "shot at him and his friends," was therefore absolutely unnecessary. See *Warlick*, 302 Ill. App. 3d 600 (holding that in a case where the defendant was charged and convicted of burglary, the trial court erred in admitting the police officer's testimony that he received a radio call of a burglary in progress and proceeded to investigate at a recycling

center; explaining that "[t]here was no issue concerning the officer's reason or motive for going to the recycling center. It simply did not matter. It would have been enough for the officer to testify he received a radio message, then went to the recycling center."); see also *Jura*, 352 Ill. App. 3d at 627 (holding that it was inadmissible hearsay for police officers to testify to the content of a radio dispatch that they received, which included a description of the suspect, since the description testimony was not necessary to explain the steps taken by the police officers in proceeding to the area where the defendant was arrested and therefore failed to satisfy any relevant non-hearsay purpose); see also *Edgecombe*, 317 Ill. App. 3d 627 (holding that contents of a radio call concerning the stop of a vehicle matching the victim's description of the getaway car went beyond what was necessary to explain the steps in the police investigation.)

¶ 61 What is more, in the present case, Detective Martin not only needlessly testified that Edward identified the defendant (from photos and a lineup), he further glaringly put forth into evidence the only testimony of an identifying witness's prior familiarity with the defendant. Specifically, Detective Martin testified that when he spoke to Edward, Edward gave him an approximate height and weight of the offender and the "area where he had seen the offender frequenting." Detective Martin explained that after entering this information into his computer, he obtained three photographs, which he then showed to Edward, and from which Edward identified the defendant as the person who shot at him and his friends. Since as shall be more fully articulated below, it is undisputed that Edward was the only identifying witness who appears to have recognized the defendant from the neighborhood, and the State's case rested entirely on witness identification testimony, there can be no doubt that Detective Martin's testimony as to Edward's initial identification based on his familiarity with the defendant was being offered for the truth of the matter asserted and was therefore improperly admitted hearsay. See *People v. Rivera*, 277

Ill. App. 3d 811, 820 (1996) ("Hearsay testimony identifying the defendant as the one who committed the crime cannot be explained away as 'police procedure' "); see *Yancy*, 368 Ill. App. 3d 381 ("[T]estimony by a third party as to statements made by another nontestifying party identifying an accused as the perpetrator of a crime constitutes hearsay testimony and is inadmissible") (quoting *Lopez*, 152 Ill. App. 3d at 672); see also *Warlick*, 302 Ill. App. 3d at 600 ("Police procedure or not, when the words go to 'the very essence of the dispute' [citation] the scale tips against admissibility.")

¶ 62 In coming to this conclusion we have considered the decisions in *People v. Peoples*, 377 Ill. App. 3d 978 (2007), and *People v. Suastegui*, 374 Ill. App. 3d 635 (2007), cited to by the State and find them inapposite.

¶ 63 In *Peoples*, the victim's wife, who witnessed the shooting, identified two codefendants from photographs and provided the police with a very detailed description of the defendant. *Peoples*, 377 Ill. App. 3d at 980-81. She subsequently identified the defendant from a photo array. *Peoples*, 377 Ill. App. 3d at 981. A detective testified at trial that after one of the codefendants was arrested, he spoke to him and obtained a portion of the name of Chris and the fact that "he either lived or had been arrested in the immediate area of the crime." *Peoples*, 377 Ill. App. 3d at 982. The detective used this information and his computer to find the name of the defendant (Chris Peoples) and placed the defendant's photo in the photo array that he then showed to the victim's wife. *Peoples*, 377 Ill. App. 3d at 982. In finding that the detective's testimony regarding the codefendant's statements as to Chris, fell within the investigative procedure exception to the hearsay rule, the court in *Peoples* explicitly noted that the detectives' testimony "did not indicate that the codefendant had identified the defendant in the shooting," but merely provided information from which the "police narrowed their investigation and eventually focused

on the defendant." *Peoples*, 377 Ill. App. 3d at 986. The court in *Peoples* concluded that the detective's testimony was not offered to show that the codefendant specifically identified the defendant to police, but rather to demonstrate the course of events over "several months" that led to the defendant's arrest. *Peoples*, 377 Ill. App. 3d at 986.

¶ 64 Unlike in *Peoples*, in the present case, Detective Martin expressly testified that Edward identified the defendant as the shooter both from photographs and in the lineup. Moreover, this gratuitous testimony served no purpose in explaining the course of the investigation, since, unlike the circumstances in *Peoples*, the defendant's arrest here was precipitated by photo array identifications by two other eyewitnesses.

¶ 65 We similarly find *Suastegui*, 374 Ill. App. 3d 635, factually distinguishable. In that case, the court found no error in admitting a single line of testimony by a police officer that he spoke to a witness who "corroborated" what another witness told police. *Suastegui*, 374 Ill. App. 3d at 644. The court concluded that the statement was not testimonial under *Crawford*, but was offered to show how the police proceeded in its investigation. *Suastegui*, 374 Ill. App. 3d at 644. In the present case, we have decided the issue purely on hearsay admissibility grounds (rather than based on the testimonial nature of the statements offered pursuant to *Crawford*). In any event, the single statement by the officer in *Suastegui* broadly characterizing the officer's interview with a witness "corroborating" another witness's testimony is nothing like Detective Martin's detailed and very specific testimony that Edward identified the defendant as the shooter both from photographs and the lineup, as well as how that identification came about.

¶ 66 Accordingly, because we find that Detective Martin's testimony about Edward's identification

was inadmissible hearsay, we must next determine whether the improper admission of this evidence rises to the level of plain error, so as to require remand for a new trial. For the reasons that follow, we find that it does.

¶ 67 The evidence at the defendant's trial was closely balanced. See *Thompson*, 238 Ill. 2d at 613 (We may review a case under the plain error doctrine where "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" [Citation.]). During trial, the defendant presented the unrefuted testimony of an alibi witness, placing him at another location at the time of the shooting. The State, on the other hand, offered no physical evidence to connect the defendant to the shooting. Nor did it offer a confession or any other inculpatory statements by the defendant admitting his involvement in the crime. Rather, as shall be articulated in more detail below, aside from the inadmissible testimony of Edward's identifications, the only evidence that the State offered linking the defendant to the crime was the dubious identification testimony of three child eyewitnesses who had never seen the defendant prior to the shooting.

¶ 68 Our supreme court has explained that the following five factors articulated in *Neil v. Biggers*, 409 U.S. 188, 199 (1972) are relevant in assessing the reliability of identification testimony of a witness in the context of a closely balanced plain error analysis: (1) the witness's opportunity to view the suspect during the offense; (2) the witness's degree of attention; (3) the accuracy of any prior descriptions provided; (4) the witness's level of certainty at the time of the identification procedure; and (5) the length of time between the crime and the identification. See *People v. Piatkowski*, 225 Ill. 2d 551, 567 (2007) (citing *Neil v. Biggers*, 409 U.S. 188, 199 (1972)). After having carefully examined the record before us, we find that the evidence presented regarding the reliability of the three identifications in no way overwhelmingly favored the State, so that the

defendant has met his burden in establishing the evidence was sufficiently closely balanced so as to require a remand for a new trial.

¶ 69 With respect to the first factor, we note that it was undisputed that all three witnesses (Tyshaun, Terry and Romaurre) testified that the shooter's face was covered during the entire incident. All three agreed that the shooter came up the hill with a bandana or some other cloth covering his face, from the nose down, and that he was between 15 to 20 feet away when they saw him. In addition, the evidence presented at trial revealed that the opportunity to view the suspect's face was exceedingly brief. All three minors testified that as the offender came running up the hill firing a gun, they ran in the opposite direction. None of them testified that they had an opportunity to view the suspect after the shooting began, and in fact admitted that once they started running they never turned around to look at him. Under these circumstances, and in light of the fact that none of the three witnesses claimed to have previously known the suspect, we cannot find that this first factor greatly favors the State.

¶ 70 Regarding the second factor, there is no indication that the witnesses were paying a great deal of attention to the offender's appearance, as they "did not know that they would be fired upon and were not attempting to assess his appearance for later identification." *Piatkowski*, 225 Ill. 2d at 568. Moreover, the presence of the gun itself, one that was being fired at them, no less, certainly decreased the witnesses' ability to pay attention to the offender. See *State v. Henderso*n, 27 A. 3d 872, 904 (N. J. 2011) ("When a visible weapon is used during a crime, it can distract a witness and draw his *** attention away from the culprit"); see also *People v. Allen*, 376 Ill. App. 3d 511, 525 (2007) (noting the academic consensus that witnesses tend to focus on weapons and not the faces of the offenders) (citing *People v. Tisdel*, 316 Ill. App. 3d

465 (2003)). In fact, as already stated above, all of the witnesses testified that as soon as the shooting began they turned around and never looked back at the offender.

¶ 71 Turning to the third factor, we note that the State presented exceedingly weak testimony as to the witnesses' prior description of the suspect. First, as already noted above, none of the three witnesses testified that they knew or had seen the offender before. In addition, there was no testimony whatsoever that Tyshaun ever gave any description of the offender to the police. With respect to Romaurre and Terry, we acknowledge that Detective Martin testified that both of these witnesses told him that the suspect was a 17 or 18-year-old, African American male, 5'6" to 5'7" tall, dressed in dark clothing. However, when asked on cross-examination, when he spoke to Terry and Romaurre, Detective Martin admitted that it was after they arrived at the police station on March 14, 2015, to view the lineup, and therefore presumably after they had already been presented with the photo array including the defendant's photograph. In addition, Detective Martin admitted that the witnesses' description of the shooter's accomplice was "substantially the same" as that of the shooter. What is more, in his testimony, Romaurre directly contradicted Detective Martin's testimony, stating that the only physical description of the shooter he gave to police was that the shooter had "something around his face, and that he could not really see his face only the top part of his face." Terry similarly testified that he never provided the police with a physical description of the offender.

¶ 72 With respect to this factor, we further find troubling that the record unequivocally establishes that the defendant had distinctive braided or dreadlocked hair at the time of his arrest (the day after the offense was committed), but that none of the witnesses, who agreed that they observed the offender only from the nose up, testified at trial that they told the officers that the person who

shot at them had braided hair. Under these facts, we conclude that the third factor favors the defendant.

¶ 73 The fourth and fifth factors—the level of certainty demonstrated at the conformation and the lapse of time between the crime and the identification—are at best neutral, but certainly do not overwhelmingly favor the State. With respect to the photo array identifications, the record reveals that only Tyshaun and Romaurre were able to make photo identifications of the defendant less than 24 hours after the incident, while Terry was not. Although neither Romaurre nor Tyshaun expressed uncertainty in identifying the defendant from the photo arrays, there was testimony elicited at trial that shed doubt as to the suggestive nature of those identifications. Tyshaun admitted that he was taking pain medication when he viewed the photo array, and that his friends visited him in the hospital afterwards and prior to Romaurre making the photo identification the next morning. In addition, there was testimony by Terry, directly contradicting that of Detective Del Favero, that when he and Romaurre viewed the photo array at school they were together and with Edward in the same room.

¶ 74 Moreover, we are troubled by the nature and composition of the lineup, from which only Romaurre and Terry identified the defendant. First, we note that although Terry identified the defendant from the lineup, he testified that while waiting to view the lineup at the police station, he was shown the same photo array from which he had been unable to identify the defendant earlier that morning. Accordingly, by the time he viewed the lineup, Terry had seen the defendant's photograph twice.

¶ 75 In addition, the defendant was the only individual in the lineup with long braided hair. While as already noted above, there was no testimony at the defendant's trial regarding the witnesses' description of the suspect having braided hair, at the motion to suppress hearing, Detective

Martin admitted that when he spoke to the witnesses who had come to the police station to view the lineup, they told him that the shooter had braided hair. Coupled with the fact that the photo arrays viewed by Romaurre and Terry in the morning prior to the lineup included only suspects with braided hair, we find that a lineup wherein the defendant was the only individual with braided hair was remarkably suggestive. See 725 ILCS 5/107A-2 (f)(3)(B) (West 2014) ("The suspected perpetrator shall not be substantially different in appearance from the fillers based on the eyewitness's previous description of the perpetrator or based on other factors that would draw attention to the suspected perpetrator."); see also *People v. Maloney*, 201 Ill. App. 3d 599, 607 (1990) ("claims of suggestiveness due to significant differences in the age, size, and appearance of a defendant and other participants in a lineup go to the weight of the evidence"); *People v. Jones*, 2012 IL App (1st) 100527, ¶ 24 (noting that the differences in the appearance of individuals selected for a lineup "go to the weight of the identification ***.")

¶ 76 Finally, we are unable to ignore the fact that all three identifications in this case came from children. "Age, like any factor that affects the ability of the witness to record and recount information accurately, is undoubtedly relevant to the reliability of the eyewitness identification." *Haliym v. Mitchell*, 492 F. 3d 680, 707 (6th Cir. 2007); see also *Henderson*, 27 A. 3d at 906 (noting studies showing that "children between the ages of nine and thirteen who view target-absent lineups are more likely to make incorrect identifications than adults."). Furthermore, children are more susceptible to pressures of their peers or police, pressure that may affect their response to police questioning. See *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2403 (2011).

¶ 77 Accordingly, under the very specific facts of this case, we find that the defendant has met his

burden in establishing that the evidence was closely balanced, so that the improper introduction of Edward's identification of him as the shooter (including the fact that he was familiar with the defendant from the neighborhood) certainly threatened to tip the scales of justice against him. See *e.g.*, *People v. Naylor*, 229 Ill. 2d 584, 610 (2008) (holding that the evidence was closely balanced where two officers testified that the defendant sold heroin to them but the defendant testified that he was mistakenly swept up in a drug raid; explaining "[g]iven these opposing versions of events, and the fact that no extrinsic evidence was presented to corroborate or contradict either version, the trial court's finding of guilty necessarily involved the court's assessment of the credibility of the two officers against that of defendant.") see also *Piatkowski*, 225 Ill. 2d at 567-71 (finding that the evidence was closely balanced where: the State presented no physical evidence to connect the defendant to the shooting, the defendant made no inculpatory statements, and the only evidence linking him to the crime was the testimony of two eyewitnesses, who looked at the defendant's face for a few seconds before the shooting and testified in a prior proceeding that part of the reason they did so was due to the defendant's goatee); see also *People v. Flournoy*, 336 Ill. App. 3d 739, 745 (2002) (holding that improper admission of identification testimony amounted to plain error because the case was closely balanced where the Sate presented testimony from an eyewitness identifying the defendant as the offender and the defense presented alibi testimony that he was home at the time of the offense) (*People v. Armstead*, 322 Ill. App. 3d 1, 12-13 (2001) (holding that officer's hearsay testimony concerning nontestifying witness's identification of the defendant as the shooter constituted reversible error, since the statement was not offered for the limited purpose of explaining the progress of his investigation, and the evidence in the case was close, such that the statement could have affected the outcome.); *but see People v. Cox*, 377 Ill. App. 3d 690 (2007) (holding

that admission of a police detective's testimony that a witness viewed the lineup and identified the defendant as the shooter did not rise to the level of plain error because the State's evidence against the defendant was overwhelming, where two additional occurrence witnesses identified the defendant in a lineup and two other occurrence witnesses testified before the grand jury that they identified the defendant in a lineup).

¶ 78 The State nevertheless asserts that any error in the admission of the hearsay testimony was harmless since Edward's identification was merely cumulative evidence in light of the other eyewitness identifications of the defendant as the shooter. We disagree. Our supreme court has repeatedly held that evidence is cumulative only "when it adds nothing to what was already before the jury." *People v. Ortiz*, 235 Ill. 2s 319, 335 (2009). In the present case, Edward's identification of the shooter as someone he had recognized from the neighborhood was evidence that was not otherwise presented to the jury. Moreover, since Edward was the first person to identify the defendant from police photos he was the original link in the chain of otherwise questionable eyewitness identifications by the other witnesses. As such, the defendant's inability to cross-examine Edward as to his identification was detrimental to his case.

¶ 79 We similarly reject the State's argument that we must presume that the trial court did not consider the inadmissible evidence because the trial judge stated that "three different people" identified the defendant as the shooter. From the record before us it is unclear to which three people the trial court was referring. This is particularly true, in light of the absurdly implausible identification made by Terry, who explicitly testified at trial that he initially did not identify the defendant form the photo array shown to him by police at school, and that he made the lineup identification later that night at the police station only after having been shown the same photo array a second time.

¶ 80 Accordingly, since we find that the improper admission of the inadmissible hearsay testimony here warrants a new trial, we must next determine whether there was sufficient evidence nonetheless to convict the defendant for purposes of any double jeopardy claim on remand. See *Piatkowski*, 225 Ill. 2d at 566-67 (citing *People v. Taylor*, 76 Ill. 2d 289, 309 (1979)). "Whether the evidence is closely balanced is, of course, a separate question from whether the evidence is sufficient to sustain a conviction on review against a reasonable doubt challenge." *Piatkowski*, 225 Ill. 2d at 566-67. The relevant inquiry for reasonable doubt purposes is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Piatkowski*, 225 Ill. 2d at 566-67 (citing *People v. Pollock*, 202 Ill. 2d 189, 217 (2002)). A positive identification by a single eyewitness is sufficient to support a conviction. *Piatkowski*, 225 Ill. 2d at 566-67. In addition, we must defer to the trier of fact on matters concerning the weight of the evidence and the witnesses' credibility. *People v. Ivy*, 2015 IL App (1st) 130045, ¶ 56; see also *People v. Siguenza–Brito*, 235 Ill. 2d 213, 228 (2009); *People v. Ortiz*, 196 Ill. 2d 410, 259 (2001).

¶ 81 While we are gravely troubled by the reliability of the identifications in this case, under the aforementioned standard of review, viewing the evidence in the light most favorable to the State and deferring to the trial court's credibility determinations, we are compelled to find that there was sufficient evidence to convict the defendant here.

¶ 82 B. The Automatic Transfer Provision

¶ 83 On appeal, the defendant also contends that the automatic transfer provision of the Juvenile Court Act (705 ILCS 405/5-130 (West 2012) violates the eighth amendment of the United States Constitution (U.S. Const. amend. VIII), the Illinois proportionate penalties clause (Ill. Const.

1970, art. I, § 11), and both the federal and state due process clauses (U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, § 2) because it subjects 15 and 16-year old defendants to an adult sentencing range. In support of this argument, the defendant relies primarily on the United States Supreme Court's decisions in *Miller v. Alabama*, 567 U.S.__, 132 S. Ct. 2455 (2012), *Graham v. Florida*, 560 U.S. 48 (2010), and *Roper v. Simmons*, 543 U.S. 551 (2005).

¶ 84 Pursuant to the automatic transfer provision, a juvenile who is at least 15 years old and is charged with certain enumerated offenses is required to be prosecuted in criminal court and, if convicted, sentenced as an adult. 705 ILCS 405/5-130 (West 2010); *People v. Patterson*, 2014 IL 115102, ¶ 91. The enumerated offenses include aggravated battery with a firearm where, as here, the juvenile personally discharged the firearm. 705 ILCS 405/5-130(a)(1)(iii); *Patterson*, 2014 IL 115102, ¶ 91. We review the constitutionality of a statute *de novo*. *Patterson*, 2014 IL 115102, ¶ 90.

¶ 85 The State argues that our supreme court in *Patterson* upheld the constitutionality of the automatic transfer provision, explicitly rejecting the same due process, eighth amendment, and proportionate-penalties arguments that the defendant raises here. *Patterson*, 2014 IL 115102, ¶¶ 89, 93-98, 106. With respect to the defendant's due-process claim, the *Patterson* court found that the decisions in *Roper*, *Graham*, and *Miller* all involved the eighth amendment, not the due process clause, and a constitutional challenge raised under one theory cannot be supported by law based on another provision. *Patterson*, 2014 IL 115102, ¶ 97. The court further noted that it had rejected a due-process claim similar to the defendant's in *People v. J.S.*, 103 Ill. 2d 395 (1984). *Patterson*, 2014 IL 115102, ¶¶ 93-94. The *Patterson* court found no reason to depart from its holding in *J.S.* despite the more recent United State's Supreme Court decisions in *Roper*, *Graham*, and *Miller*. *Patterson*, 2014 IL 115102, ¶ 98.

¶ 86 The *Patterson* court likewise rejected the defendant's eighth amendment and proportionate-penalties claims, reasoning that the purpose of the automatic transfer provision was not to punish a defendant, but rather to establish the relevant forum for the prosecution of a juvenile defendant charged with one of five serious crimes. *Patterson*, 2014 IL 115102, ¶ 105. Holding that the automatic transfer provision was merely procedural and did not actually impose punishment, our supreme court found that the defendant's eighth amendment and proportionate-penalties clause arguments were meritless. *Patterson*, 2014 IL 115102, ¶¶ 101, 106.

¶ 87 The defendant acknowledges the decision in *Patterson*. Nonetheless, he argues that *Patterson* was wrongly decided and thus seeks to preserve his argument for federal constitutional review, noting that the writ of certiorari in the United States Supreme Court remains pending in that case.

¶ 88 To the extent the defendant seeks to preserve his claim, he is free to do so. However, as a court of review, we are bound by the *Patterson* decision and must follow established precedent. See *e.g.*, *In re Shermaine S.*, 2015 IL App (1st) 142421, ¶ 32. Accordingly, we reject the defendant's claim that Illinois's automatic transfer provision is unconstitutional.

¶ 89 III. CONCLUSION

¶ 90 For all of the aforementioned reasons, we reverse and remand for a new trial.

¶ 91 Reversed and remanded.