2015 IL App (1st) 140720-U
No. 1-14-0720

THIRD DIVISION
October 28, 2015

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 12 CR 20600
	)	
ARMOND THORNTON,	)	
	)	The Honorable
Defendant-Appellant.	)	Noreen Valeria Love,
	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Mason specially concurred.
Justice Lavin concurred.

ORDER

¶ 1 *Held:* Minor defendant's armed robbery conviction affirmed where defendant knowingly and voluntarily waived his constitutional right to a jury trial and where his adult criminal bench trial, conducted in accordance with the exclusive jurisdiction provision of the Illinois Juvenile Court Act, did not infringe upon his constitutional rights; minor defendant's 21-year sentence affirmed where the mandatory adult criminal sentencing range to which he was subjected was constitutional and where the court considered and relied upon significant mitigating evidence when it elected to impose the minimum sentence allowed by law.

¶ 2 Following a bench trial, defendant Armond Thornton was convicted of armed robbery with a firearm and was sentenced to 21 years' imprisonment. Although he was 17-years-old at

the time of the offense, defendant was tried and sentenced as an adult in accordance with the exclusive jurisdiction provision set forth in section 5-120 of the Illinois Juvenile Court Act of 1987 ("Juvenile Court Act" or "Act") (705 ILCS 405/5-120 (West 2010)). On appeal, defendant seeks reversal of his conviction, arguing that he did not knowingly and voluntarily waive his right to a jury trial. He also challenges the constitutionality of the Illinois Juvenile Court Act's exclusive jurisdiction provision and sentencing scheme and his resulting 21-year sentence. For the reasons set forth herein, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 On September 30, 2012, Jose Espino, a taxi driver, was robbed at gun point by three young males who were passengers in his cab. Defendant, a 17-year old high school student, was arrested in connection with the incident and was charged with armed robbery with a firearm (720 ILCS 5/18-2(a)(2) (West 2010)). Although he was just 17 years of age at the time of the offense, the cause was transferred from juvenile court to adult criminal court as required by the exclusive jurisdiction provision of the Juvenile Court Act. 705 ILCS 405/5-120 (West 2010). Co-defendants Robert Adams and Montrell Williams were also arrested and charged with armed robbery.[1] All three co-defendants executed written jury trial waivers in open court and the cause proceeded to simultaneous but severed bench trials.

¶ 5 At trial, Espino testified that on September 30, 2012, at approximately 11 p.m., he was dispatched to 500 Linden Avenue located in Bellwood, Illinois. When he arrived at that location, three young African American males came around the side of a house and approached his taxi. Once they entered his cab, Espino asked them where they were going and he was told to take them "to the Lucky Dog in Melrose Park." On his way to Lucky Dog, Espino's passengers

[1] Adams and Williams have filed their own appeals (1-13-3523 and 1-13-3894, respectively), which are currently pending before this court and are not parties to the instant appeal.

directed him to return to the Linden Avenue address in order to pick up another passenger. When he returned to that location, Espino stopped his car. After he did so, one of the passengers reached from the backseat, turned off the ignition and grabbed his car keys. Espino, in turn, grabbed the young man's arm, but the young man was able to yank his arm away. The young man then put a gun to Espino's head and instructed him not to move. When Espino turned his head to look into the backseat and asked, "What do you want?" the young man told him that he wanted "the money." Espino then reached into his pocket and gave the young man $20. He testified that neither of the other two passengers were wielding guns or demanding money; rather, they were simply instructing the gunman to "Hurry up. Rush it."

¶ 6 After handing over the $20 bill, Espino took off his seat belt and attempted to get out of his car. When he put his feet outside of the taxi, however, he was again ordered not to move. Each of the three passengers subsequently exited the vehicle. The two passengers without the gun began telling the gunman to "check [Espino's] pockets" for more money. Espino then pulled out another $20 bill, but told them that he had only been working for three hours and had not made much money that evening. Espino testified that the young men took his money and also "took I.D.'s from [him] and business cards." After taking his money, I.D.'s and business cards, the gunman threw Espino's keys across the street and the three young men walked in the other direction around the side of a house. Espino retrieved his keys and then placed a call to 911 to report the incident, which had been recorded on the camera he had in his taxi. Espino explained that his cab was equipped with a hidden camera that takes still images of the backseat of the car at regular intervals. It is activated when any door to the vehicle is opened. Because the camera only takes pictures at regular intervals and does not record everything, Espino acknowledged that

there were no still images showing a gun held to his head or of him grabbing the arm of one of his passengers. There were, however, still images taken of the passengers.

¶ 7 Detective Zachary Sienkiewicz, a police officer with the Hillside Police Department, testified that in 2012, he was the school liaison officer at Proviso West High School (Proviso West). In that capacity, he dealt with any criminal issues that arose at the school and became familiar with the students attending the school. Detective Sienkiewicz recalled that in October 2012, he met with Detectives Buckner and O'Neal, two officers from the Bellwood Police Department, who showed him a "video of still shots taken from a taxi cab." He recalled that the images depicted "three subjects in the backseat of the cab and the taxi driver in the front seat." Based on the time he had spent as a liaison officer at Proviso West, Detective Sienkiewicz "recognized all three subjects" recorded on the video because they were students enrolled at the high school. He identified defendant, and co-defendants Williams and Adams as the three individuals depicted on the video of still images taken from Espino's taxi cab.

¶ 8 Bellwood Police Detective Corey O'Neal confirmed that in October 2012 he was assigned to investigate Espino's case. He further confirmed that he went to Proviso West High School on October 9, 2012, where he picked up defendant and co-defendant Williams[2] and transported them to the Bellwood Police Station. After the two young men were separated, Detective O'Neal testified that he then advised defendant of his *Miranda* rights. At that point, defendant indicated that he understood his rights but was willing to speak to him. After defendant signed a written *Miranda* waiver form,[3] Detective O'Neal informed him that he had

[2] It appears from the record that co-defendant Adams was no longer attending Proviso West High School in October 2012 and that he was not taken into custody at the same time that defendant and co-defendant Williams were taken into custody on October 9, 2012.

[3] We acknowledge that defendant does not raise any challenge regarding the waiver of his *Miranda* rights. However, as will be discussed in more detail in this disposition, in a series of recent cases the United State Supreme Court (*Roper v. Simmons*, 543 U.S. 551 (2005); *Graham v. Florida*, 560 U.S. 4 (2010); *Miller v. Alabama*, 132 S.

been brought into the station "in reference to a robbery." Defendant responded that he did not know anything about a robbery, but indicated that on the night in question, he had been on his way to his girlfriend's house when he was approached by two unknown individuals who asked to use his cell phone to call a cab. Defendant denied getting into a cab himself that night. When Detective O'Neal showed defendant a still photograph taken from Espino's cab, defendant initially denied that he was one of the individuals depicted in the picture. He subsequently acknowledged that one of the individuals in the picture looked like him, but stated he did not remember being in a cab on the evening of September 30, 2012.

¶ 9 Detective O'Neal testified that sometime after the initial interview concluded and defendant had been placed in lockup, defendant sought to reopen communications with him and the Assistant State's Attorney assigned to the case. During the second interview, defendant admitted to being in Espino's cab, but stated that he did not know the names of the other two individuals who had been in the cab with him that evening. Defendant also admitted that he had taken the cab driver's keys out of the ignition and had thrown them as he exited the cab, but denied that there had been a robbery.

¶ 10 After the State presented the aforementioned testimony, defense counsel moved for a directed finding; however, the motion was denied. Similar motions were also advanced by the attorneys representing defendant's co-defendants and were likewise denied. Defendant elected not to testify and the defense called no witnesses. His co-defendants neither testified nor called any witnesses of their own and the parties subsequently engaged in closing arguments.

Ct. 2455 (2012)) and Illinois Supreme Court (*People v. Patterson*, 2015 IL 115102) have begun recognizing that important inherent differences exist between adult and juvenile offenders. Namely, juvenile offenders' brains are still developing, they are more prone to exhibiting impulsive and reckless behavior and they are more susceptible to outside influences. Given these differences, we believe this is a good time to reevaluate the wisdom of current case law that allows juvenile offenders to waive their *Miranda* rights.

¶ 11 After hearing arguments of the parties and evaluating the aforementioned evidence, the circuit court made a finding of guilty as to each defendant. At the sentencing hearing that followed, the circuit court, upon hearing the evidence offered in aggravation and mitigation, sentenced defendant and his two co-defendants to 21 years' imprisonment, the mandatory minimum sentence allowed by statute. In doing so, the court stated that if it could have imposed a lesser sentence, it would have done so; however, its "hands [were] tied." This appeal followed.

¶ 12 ANALYSIS

¶ 13 Jury Trial Waiver

¶ 14 On appeal, defendant raises no challenge to the sufficiency of the evidence. Instead, defendant argues that the circuit court failed to ensure that his jury trial waiver was made knowingly and voluntarily and, as a result, he seeks reversal of his conviction and remand for a new trial. Specifically, he argues that the circuit court never explained the difference between a jury trial and a bench trial or discussed the consequences that would result if he waived his right to a jury trial. Given that he was a teenager and first-time offender who had no prior exposure to the judicial process, defendant argues that the circuit court's failure to provide him with that information resulted in an invalid jury trial waiver.

¶ 15 The State, in turn, initially responds that defendant failed to properly preserve this issue for appellate review. On the merits, the State asserts that the record reflects that defendant's jury trial waiver was made knowingly and voluntarily. The State emphasizes that defendant was present when defense counsel advised the court that defendant elected to proceed by way of a bench trial and voiced no objection. Moreover, defendant executed a written waiver in open court, and in response to court questioning, acknowledged that he knew what a jury trial was and that he was giving up his right to one.

¶ 16 As a threshold matter, defendant concedes that he failed to properly preserve this issue for appellate review. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (recognizing that to properly preserve an issue for appeal, a defendant must object to the purported error at trial and specify the error in a post-trial motion and that his failure to satisfy both requirements results in forfeiture of appellate review of his claim). The plain error doctrine, however, provides a limited exception to the forfeiture rule and allows for review of forfeited issues on appeal if the evidence is closely balanced or the error is of such a serious magnitude that it affected the integrity of the judicial process and deprived the defendant of his right to a fair trial. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967); *People v. Belknap*, 2014 IL 117094, ¶ 48; *People v. Sargent*, 239 Ill. 2d 166, 189 (2010); *People v. Piatkowski*, 225 Ill. 2d 551, 564-65 (2007). The first step in any plain error analysis is to determine whether any error actually occurred. *Piatkowski*, 225 Ill. 2d at 565. If an error is discovered, the defendant then bears the burden of persuasion to show that the error prejudiced him under either prong. *Sargent*, 239 Ill. 2d at 189-90. Given that the right to a jury trial is a fundamental constitutional right, reviewing courts have historically reviewed the issue of whether a defendant's fundamental right to a jury trial has been violated for plain error under the second plain error prong.[4] See, *e.g.*, *In re R.A.B.*, 197 Ill. 2d at 362-63 (2001); *People v. Bracey*, 213 Ill. 2d 265, 270 (2004); *People v. Campbell*, 2015 IL App (3d) 130614, ¶ 14; *People v. Rincon*, 387 Ill. App. 3d 708, 717 (2008). We will abide by established precedent and review defendant's claim for plain error.

¶ 17 A criminal defendant's right to a jury trial is one that is guaranteed by the federal and Illinois State constitutions. U.S. Const. amends., VI, XIV; Ill. Const. 1970, art. I, § 8, § 13. Nonetheless, a defendant may waive his right to a jury and elect to proceed by way of a bench

[4] We note that defendant does not argue that the evidence against him was closely balanced; rather, he limits his plain error argument to the second-prong of plain error review.

trial as long as the waiver is made knowingly and understandingly in open court. 725 ILCS 5/103-6 ("Every person accused of an offense, shall have the right to a trial by a jury unless *** understandingly waived by the defendant in open court"); *People v. Bannister*, 232 Ill. 2d 65-66 (2008). Although a court has a duty to ensure that a defendant's jury trial waiver is knowingly and understandingly made, the court is not required to impart to the defendant a specific set of admonishments or advise the defendant of the consequences of his waiver. *Bannister*, 232 Ill. 2d at 66; *Bracey*, 213 Ill. 2d at 269-70; *Rincon*, 387 Ill. App. 3d at 717-18. The validity of a jury waiver is not dependent upon any specific formula; rather it is dependent upon the unique facts and circumstances of each case. *Bracey*, 213 Ill. 2d at 269; *In re R.A.B.*, 197 Ill. 2d at 364. As a general rule, however, courts have consistently held that a jury waiver is valid if there is an express statement by defense counsel, in the defendant's presence and without the defendant's objection, indicating that his client has decided to forgo his right to a jury trial in favor of a bench trial. *In re R.A.B.*, 197 Ill. 2d at 364; *Rincon*, 387 Ill. App. 3d at 718-19. In doing so, courts have rationalized: " 'A defendant speaks and acts through his attorney; therefore, a trial court may rely on the defense attorney to execute his professional responsibilities. *** Thus, where the defense counsel informs the trial court of the defendant's desire to waive his right to a jury trial, the defendant has knowingly and understandingly consented to the waiver.' " *Rincon*, 387 Ill. App. 3d at 721, *quoting People v. Steiger*, 208 Ill. App. 3d 979, 981-82 (1991). Ultimately, the issue of whether a defendant knowingly and understandingly waived his fundamental right to a jury trial presents a question of law and is thus subject to *de novo* review. *Bracey*, 213 Ill. 2d at 270.

¶ 18 Here, defendant was represented by counsel throughout the entirety of the proceedings in the circuit court. On several occasions, during routine status hearings, there were references to a

bench trial made by the court and defense counsel in defendant's presence. Specifically, on July 20, 2013, after discussing discovery matters, the circuit court inquired, "[b]ench trials or jury?" Defense counsel for defendant as well as counsel for his co-defendants each replied "Bench" in response to the court's inquiry and the court responded, "Let's reserve a bench trial date." Thereafter, on August 29, 2013, after the circuit court presided over a hearing on defendant's motion to suppress, a motion the court ultimately denied, defense counsel informed the court that a trial date had been set. The court then sought clarification as to the nature of the upcoming trial, inquiring, "And is that a bench?" Defense counsel, in defendant's presence, responded, "It is, Judge." During the next status hearing conducted on September 10, 2013, the parties discussed setting the trial date to September 19, 2013, and references were again made to a bench trial. Finally, on the day of trial, defendant and his co-defendants appeared before the court in the presence of their attorneys. At that point, counsel for co-defendant Adams provided the court with a written jury trial waiver that had been signed by his client. After the court spoke to Adams and accepted his waiver, the following exchange took place in open court:

> "THE COURT: Do we have waivers for the other defendants? ***
>
> [Defense Counsel]: Yes, your honor. On behalf of Mr. Armond Thornton *** I do have a waiver to you he has executed in open court.
>
> THE COURT: Mr. Thornton, I have here, sir, a jury waiver. Is this your signature?
>
> [DEFENDANT]: Yes, ma'am.
>
> THE COURT: And by signing this, you give up the right to have a trial by a jury. Do you understand what a jury trial is?
>
> [Defendant]: Uh-huh."

¶ 19 After conferring with defendant in open court, the court next obtained a written jury waiver from co-defendant Williams. Upon accepting jury trial waivers from defendant and his two co-defendants, the circuit court presided over his simultaneous but severed bench trial.

¶ 20 Based on our review of the record and relevant case law, we must reject defendant's argument that his jury trial waiver was not entered into knowingly and voluntarily. Initially, we note that defendant signed and submitted a written jury trial waiver in open court. Although a written jury waiver is not dispositive, the presence a " 'signed jury waiver *** lessens the probability that the waiver was not made knowingly.' " *Rincon*, 387 Ill. App. 3d at 720, *quoting Steiger*, 208 Ill. App. 3d at 982. Moreover, defendant was present on multiple occasions prior to trial where the issue of a bench trial was broached and discussed in open court. Defendant was also present on the day of trial when defense counsel advised the court that defendant had waived his right to a jury trial. The record shows that defendant made no objection in response to his attorney's statements before the court. As explained above, courts have repeatedly upheld the validity of jury waivers, where as here, a defense attorney, in his client's presence, advises the court that the defendant has elected to forgo his right to a jury trial in favor of a bench trial, and where the defendant makes no objection to those statements in open court. See, *e.g.*, *People v. Frey*, 103 Ill. 2d 327, 330 (1984); *Rincon*, 387 Ill. App. 3d at 720-21. Moreover, we note that in this case, rather than raising any objection to defense counsel's statements, defendant, in response to inquiries from the court, actually confirmed that he knew what a jury trial was and that he wanted to waive his right to such a trial. Although we acknowledge that defendant was teenager with no prior experience with adult criminal court proceedings, the circuit court was not obligated to provide him with a special set of admonishments prior to accepting his jury waiver. See *In re R.A.B.*, 197 Ill. 2d at 364 (recognizing that "no specific admonition or advice is

required before an effective jury waiver may be made" in a case involving a juvenile offender). Given that we are bound to follow established precedent and adhere to principles of *stare decisis*, we must conclude that although he was 17-years-old at the time, defendant's jury trial waiver was made knowingly and voluntarily.

¶ 21 In so finding, we are unpersuaded by defendant's reliance on *People v. Phuong*, 287 Ill. App. 3d 988 (1997) and *People v. Sebag*, 110 Ill. App. 3d 821 (1982). In *Phuong*, a recent Chinese immigrant was charged with retail theft and received a court-appointed attorney. Prior to trial, the defendant signed a written jury trial waiver that had been translated from English into Chinese. *Phuong*, 287 Ill. App. 3d at 996. Thereafter, her attorney stated in open court, in the defendant's presence, that she had elected to proceed by way of a bench trial. *Id*. On appeal, the appellate court reversed the defendant's conviction, finding that her jury trial waiver had not been made knowingly. In doing so, the court emphasized that the defendant did not speak English and had no prior involvement in the American criminal justice system. *Id*. Moreover, although the court acknowledged that the defendant had signed a written jury trial waiver form, it indicated that it was "not convinced that the mere translation of the waiver form adequately conveyed its meaning to defendant." *Id*.

¶ 22 In *Sebag*, a *pro se* defendant, after being informed by the court that he was "entitled to have [his] case tried before a jury or a judge," responded "Judge." *Sebag*, 110 Ill. App. 3d at 828-29. Although a signed jury waiver appeared in the record, the appellate court reversed the defendant's conviction for public indecency, finding that the record did not reflect a knowing waiver of his right to a jury trial. In doing so, the court explained: "The defendant was without benefit of counsel, and it does not appear that he was advised of the meaning of a trial by jury nor does it appear that he was familiar with criminal proceedings." *Id*. at 829.

¶ 23 Here, however, none of the unique facts that prompted reviewing courts in *Phuong* and *Sebag* to conclude that the defendants' jury waivers were invalid are present in the instant case. Notably, unlike *Phoung*, defendant was born in this country, speaks fluent English, and signed a written jury waiver executed in his native language. Moreover, unlike *Sebag*, defendant was represented by counsel throughout all of the lower court proceedings and was present on multiple occasions in which references to a bench trial were made by either the court or his attorney. We reiterate that the validity of a jury trial waiver is dependent upon the unique circumstances of each case (*In re R.A.B.*, 197 Ill. 2d at 364), and conclude that based upon the record in this case, defendant's waiver was made knowingly and voluntarily.

¶ 24 Constitutionality of the Exclusive Jurisdiction Provision and Sentencing Scheme

¶ 25 Defendant next challenges the constitutionality of the Illinois Juvenile Court Act's exclusive jurisdiction provision and sentencing scheme.[5] Specifically, he argues that the "exclusive jurisdiction provision of the Juvenile Court Act violates [his] right to due process and his right to be free from cruel and unusual punishment because it automatically subjected him to the adult court process without consideration of the inherent differences between adults and juveniles or juveniles' mitigated culpability."

¶ 26 The State responds that defendant's challenge to the Juvenile Court Act's exclusive jurisdiction provision is without merit, characterizing it as "nothing more than a revamped version of the challenge previously made and repeatedly rejected to the constitutionality of the [related] [a]utomatic [t]ransfer provision of the Juvenile Act." Specifically, the State argues that the exclusive jurisdiction provision, like the automatic transfer provision, does not impose punishment; rather it only "provides a mechanism for determining where [a] defendant's case is

[5] We will address defendant's arguments pertaining to the constitutionality of the Juvenile Court Act's exclusive jurisdiction provision and sentencing scheme in a different order than that set forth in defendant's appellate brief.

to be tried" and thus does not violate the eighth amendment's prohibition against cruel and unusual punishment. In addition, the State further argues that exclusive jurisdiction provision does not violate any due process guarantees because it, like the automatic transfer provision, is "rationally based on the juvenile's age and the threat posed by the offenses because of the violence and frequency of their commission."

¶ 27 The constitutionality of a statute is an issue of law that is subject to *de novo* review. *People v. Sharpe*, 216 Ill. 2d 481, 486-87 (2005). Because statues carry a "strong presumption" of constitutionality, it is the burden of the party challenging the constitutionality of a given statute to "clearly establish" that the statute violates constitutional protections. *Id*. at 487. A reviewing court is duty-bound to "construe a statute in a manner that it upholds its validity and constitutionality if it reasonably can be done." *People v. Graves*, 207 Ill. 2d 478, 482 (2003).

¶ 28 The Illinois Juvenile Court Act's exclusive jurisdiction provision in effect at the time of the offense[6] provided: "§ 5-120. Exclusive jurisdiction. Proceedings may be instituted under the provisions of this Article [The Juvenile Court Act] concerning any minor who prior to the minor's 17th birthday has violated or attempted to violate, regardless of where the act occurred, any federal or state law or municipal or county ordinance, and any minor who prior to his 18th birthday has violated or attempted to violate, regardless of where the act occurred, any federal, State, county or municipal law or ordinance classified as a misdemeanor offense. *** Except as provided in Sections 5-125, 5-130, and 5-180 of this Article, no minor who was under 17 years of age at the time of the alleged offense may be prosecuted under the criminal laws of this State." 705 ILCS 405/5-120 (West 2010).

[6] It is worth noting that in January 2014, the age of defendants under the jurisdiction of juvenile court was raised from 17 to 18 years of age. Pub. Act 98-61 (eff. Jan. 1, 2014) (amending 705 ILCS 405/5-120 (West 2010)).

¶ 29 The Illinois Juvenile Court Act's related provision, the automatic transfer provision, in turn, provided: "§ 5-130: Excluded jurisdiction. The definition of delinquent minor under Section 5-120 of this Article shall not apply to any minor who at the time of an offense was at least 15 years of age and who is charged with: (i) first degree murder, (ii) aggravated criminal sexual assault, (iii) aggravated battery with a firearm as described in Section 12-4.2 or subdivision (e)(1), (e)(2), (e)(3), or (e)(4) of Section 12-3.05 where the minor personally discharged a firearm as defined in Section 2-15.5 of the Criminal Code of 1961 or the Criminal Code of 2012, (iv) armed robbery when the armed robbery was committed with a firearm, or (v) aggravated vehicular hijacking when the hijacking was committed with a firearm." 705 ILCS 405/5-130 (West 2010).

¶ 30 Defendant argues that the Illinois Juvenile Court Act's exclusive jurisdiction provision does not withstand constitutional scrutiny in light of a series of United States Supreme Court cases recognizing that fundamental differences exist between juvenile and adult offenders and that criminal procedural laws that completely fail to take a juvenile offender's age into account violate the eighth amendment's prohibition against cruel and unusual punishment. The specific cases relied upon by defendant include *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, 132 S. Ct. 2455 (2012). In *Roper*, the United States Supreme Court held that the eighth amendment forbids the imposition of the death penalty on offenders who were under 18 years of age when they committed their crimes. Thereafter, in *Graham*, the Court held that the imposition of a life sentence without the possibility of parole on a juvenile offender who does not commit a murder, violates the tenets of the eighth amendment. Finally, in *Miller*, the Court concluded that any sentencing scheme calling for the mandatory imposition of a life sentence without the possibility of parole on

offenders who were under the age of 18 at the time of their offense violates the eighth amendment's prohibition against cruel and unusual punishment.

¶ 31 In *People v. Patterson*, 2014 IL 115102, our supreme court recently examined the constitutionality of the Juvenile Court Act's automatic transfer provision (705 ILCS 405/5-130 (West 2006)) in light of the United States Supreme Court's decisions in *Roper*, *Graham* and *Miller* and ultimately concluded that the provision did not violate the eighth amendment's prohibition against cruel and unusual punishment or procedural and substantive due process guarantees. In rejecting the defendant's eighth amendment challenge, the court reasoned that the automatic transfer provision is not punitive in nature; rather, it simply dictates the forum and procedure to be utilized to determine the culpability of juvenile offenders charged with certain crimes. *Patterson*, 2014 IL 115102, ¶¶ 104-05. Accordingly, the court concluded that "in the absence of any actual punishment imposed by the transfer statute, defendant's eighth amendment challenge cannot stand. [Citations.]" *Id*. ¶ 106. The court further found the defendant's reliance on the eighth amendment analyses set forth in *Roper*, *Graham* and *Miller* to support his procedural and substantive due process claims unpersuasive, reasoning that "the applicable constitutional standards differ considerably between due process and eighth amendment analyses" and that "a constitutional challenge raised under one theory cannot be supported by decisional law based purely on another provision." *Id*. ¶ 97. Moreover, the court emphasized that the automatic transfer provision was a "creature of legislation" and "decline[d] to second-guess the validity of the legislature's judgment" that criminal court is the proper trial setting for a limited group of juveniles charged with certain serious crimes. *Id*. ¶¶ 104-05. While the court did suggest that the legislature re-evaluate the automatic transfer provision the legislature has not yet completed that work.

¶ 32 Although defendant acknowledges our supreme court's holding in *Patterson*, he suggests that the court's reasoning "is not equally applicable here" because his appeal pertains to the exclusive jurisdiction provision rather than the automatic transfer provision. We disagree as reviewing courts have consistently held that the same reasoning utilized by courts in rejecting constitutional challenges to the automatic transfer statute was equally applicable to the exclusive jurisdiction provision. See, *e.g.*, *People v. Cavazos*, 2015 IL App (2d) 120171, ¶ 97; *People v. Harmon*, 2013 IL App (2d) 120439, ¶ 55; see also *People v. Fiveash*, 2015 IL 119669, ¶ 45 (recognizing that although the exclusive jurisdiction provision was not the provision at issue in *Patterson*, "the same concern pervades the arguments raised by both the defendants in *Patterson* and [defendants subject to the exclusive jurisdiction provision]"). That is because the exclusive jurisdiction provision, like the automatic transfer provision, merely excludes a specific class of juvenile offenders from adjudication in a juvenile forum and subjects them to adult criminal prosecution and sentencing. In addition, neither provision imposes punishment; rather, both provisions merely dictate where a juvenile's case should be tried. Therefore, we find our supreme court's decision in *Patterson* applicable and relevant to the case at bar. We further find that in light of that decision, defendant's constitutional challenge to the Illinois Juvenile Court Act's exclusive jurisdiction provision necessarily fails. Because the exclusive jurisdiction provision does not impose punishment, the provision does not violate the eighth amendment's proscription against cruel and unusual punishment and the analyses employed in *Roper*, *Graham* and *Miller* are not applicable and do not warrant a different result. See *Patterson*, 2014 IL 115102, ¶¶ 97, 106. The exclusive jurisdiction provision also does not offend due process guarantees because it, like the automatic transfer provision, is based on the legislature's

determination that adult criminal court is the proper trial setting for older juveniles charged with serious crimes. *Id*. ¶ 105.

¶ 33 In light of the aforementioned precedent, we are without authority to find the Juvenile Court Act's exclusive jurisdiction provision unconstitutional. We do, however, join our supreme court in urging the legislature to re-consider both the automatic transfer provision and the exclusive jurisdiction provision, which currently omit any mechanism by which the circuit court can consider the characteristics of juvenile offenders before subjecting them to adult criminal prosecution and sentencing.[7] While these provisions may, in their current form, comport with the letter of the law, they are certainly at variance with the spirit of the law and do not take into consideration any of the inherent characteristics of youth, including "children's diminished culpability and heightened capacity for change," factors cited repeatedly by the United State's Supreme Court in its *Roper-Graham-Miller* trilogy. *Miller*, 132 S. Ct. at 2469.

¶ 34 In a related claim, defendant also challenges the constitutionality of his sentence. Relying principally on the United States Supreme Court's decision in *Miller v. Alabama*, where the court held that the imposition of sentences of mandatory life imprisonment without the possibility of parole on juvenile offenders was unconstitutional, he argues that the imposition of any mandatory adult minimum sentence on juveniles, such as the 21-year sentence to which he was subjected, also violates the constitutional prohibition against cruel and unusual punishment because it precludes any consideration of a juvenile offender's age or the hallmark characteristics of youth.

[7] We note that the supreme court again recently "encouraged" the Illinois legislature to reevaluate the provisions contained in the Juvenile Court Act given "the inherent tension and potential for perceived unfairness between juvenile dispositions and the comparatively harsh punishments defendants may face in criminal court for offenses allegedly committed as juveniles." *People v. Fiveash*, 2015 IL 117669, ¶ 46.

¶ 35 The State in turn, argues that defendant's sentence does not violate the Court's decision in *Miller v. Alabama* because that holding was limited to sentencing schemes mandating sentences of life imprisonment without the possibility of parole, which are qualitatively different from the mandatory term-of-years minimum sentence at issue in the instant case. The State further argues that "there is nothing constitutionally infirm" about mandatory sentencing ranges and emphasizes that "the Illinois sentencing structure at issue here does not prevent a court from making individualized sentencing determinations within a defined sentencing range established by the legislature."

¶ 36 As set forth above, in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), the United States Supreme Court held that any sentencing scheme calling for the mandatory imposition of a life sentence without the possibility of parole on offenders who were under the age of 18 at the time of their offense violates the eighth amendment's prohibition against cruel and unusual punishment. In so holding, the court reasoned that "children are constitutionally different from adults for purposes of sentencing" and that "youth matters in determining the appropriateness of a lifetime of incarceration without the possibility of parole." *Id*. at 2464-2465. Based on these differences, the court held that "a judge must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty possible for juveniles" and concluded that any sentencing scheme mandating the imposition of a life sentence without possibility of parole on a juvenile offender absent any consideration of the "hallmark features" of youth including "immaturity, impetuosity, and failure to appreciate risks and consequences" runs afoul of the constitutional guarantees of the eighth amendment. *Id*. at 2468.

¶ 37 In this case, because defendant was prosecuted in adult criminal court, he was automatically subject to a mandatory adult sentencing range of 21 to 45 years' imprisonment for

the offense of armed robbery with a firearm absent any consideration of his age. 720 ILCS 5/18-2(a)(2) (West 2010)).[8] Although this sentencing range is not inconsequential, it is not the equivalent of a sentence of mandatory life imprisonment without the possibility of parole, the specific sentence decreed unconstitutional in *Miller*. Thus far, neither the United States Supreme Court nor the Illinois Supreme Court has expanded the scope of *Miller* to mandatory minimum term-of-year sentences, the type of sentence imposed upon defendant. See *Patterson*, 2014 IL 115102, ¶ 110 ("[B]oth this court and the United States Supreme Court have closely limited the application of the rationale expressed in *Roper*, *Graham*, and *Miller*, invoking it only in the contexts of the most severe of all criminal penalties," i.e., the death penalty or mandatory life imprisonment without the possibility of parole); see also *People v. Pace*, 2015 IL App (1st) 110415, ¶ 132 ("*Miller*, however, merely stands for the proposition that the state cannot impose adult mandatory *maximum* penalties on a juvenile offender without permitting the sentencing authority to take the defendant's youth and attendant characteristics into consideration"); *People v. Pachecho*, 2013 IL App (4th) 110409, ¶ 58 ("The Supreme Court did not hold in *Roper*, *Graham*, or *Miller* the eighth amendment prohibits a juvenile defendant from being subject to the same mandatory minimum sentence as an adult, unless the mandatory minimum sentence was death or life in prison without the possibility of parole"). Ultimately, based on current legal landscape, the sentencing scheme to which defendant was subjected cannot be deemed unconstitutional.

¶ 38 We further find that defendant's 21-year sentence does not constitute cruel and unusual punishment. As explained above, the circuit court was afforded discretion to sentence defendant within a fixed sentencing range of 21 to 45 years' imprisonment. 720 ILCS 5/18-2(a)(2) (West

[8] Given his prosecution in adult criminal court, defendant is statutorily required to serve 50% of his 21-year sentence based on the specific truth-in-sentencing provision applicable to his offense. 730 ILCS 5/3-6-3(a)(2.1) (West 2010).

2010). At the sentencing hearing, the State acknowledged defendant's lack of criminal record, stating: "aside from having a no appearance default curfew ticket for which he was charged and fined, [defendant] does not have any felony criminal background" and requested "that the defendant be sentenced to a term of 25 years IDOC." In mitigation, defense counsel read into the record three letters submitted on defendant's behalf by the Dean of Students of his high school, his English teacher, and his guidance counselor. In their letters, the authors refer to defendant as "a young man full of promise," and describe him as "mild mannered and peaceful," "dependable," "personable," and "very polite." The Dean and defendant's guidance counselor both requested "leniency" and "mercy" on the part of the court when imposing his sentence. The guidance counselor, in particular, stressed that the incident was "very unlike [defendant's] character" and was the result of him "being influenced by or in search of a friend."

¶ 39 After hearing evidence in mitigation and defendant's statement in allocution, the court sentenced defendant to 21 years' imprisonment, the minimum sentence allowed by statute. In doing so, the court stated:

> "This is the worst part of my job. Because there are certain offenses for which my hands are absolutely tied as far as sentencing. It's always tied because there are minimums and maximums, but this is a very serious offense, and I, obviously, can do nothing other than what the law allows me to do.
>
> When I get and I look at a situation like this, and it makes me think of the kids who don't have a driver's license, never were taught to drive, steal mom and dad's car keys, they get into the car, and at some point realize that it's more than they can handle because they never learned how to drive it, have a crash and somebody gets killed. Not because

they're bad kids, but because they didn't take the time to think of what the consequences might be for the actions that they were taking.

Or the kid who finds dad's revolver and is playing shoot-em-up with his kid brother, and the gun goes off and his kid brother gets killed, not because he's a bad kid, but because he did something stupid without ever thinking about what the ultimate consequences could be.

And the reason I give these examples is because this particular charge, because it was our legislators who have decided it's appropriate of a minimum 21 years in the penitentiary, and that's a significant piece of time. And it's tantamount to me, to—well, actually, it's not, because loss of life can never be measured by somebody spending years in the penitentiary, but that the consequences are so significant, just doing something stupid, the worst that can happen is a slap on the wrist, and that is not the case. You get behind the wheel of a car and somebody gets killed, you never thought the consequences could be that severe. When you were wielding around dad's gun and it goes off, you never thought the consequences would be that severe. And the situation is where, I mean the public has no idea. We do, because we work in this particular arena, that the consequences in this particular charge are that severe, and when I say severe, that is severe, 21 years is severe.

But my hands are tied. I have no other choice but to sentence you to 21 years in the Illinois Department of Corrections, with a three-year mandatory supervised release period. That is a form of parole here in the State of Illinois. You will receive credit for the time that you have been in custody."

¶ 40 Defendant's co-defendants also received the minimum 21-year sentence permitted by law. After imposing their sentences, the court addressed all three juveniles in open court, stating:

> "I have looked at the PSI's on each of you, and I don't think any of you young men are bad young men. I think that, the same way that all of us did when we were teenagers, you do some stupid things and somebody gets into trouble, but this is kind of the ultimate. You are not like a lot of young people who come before me who are absolute thugs committing murders. I don't see that in any of you. I hope that, though this is a setback, that you do something positive when you get into the penitentiary, continue your education, do everything that you need to do, read a lot, that is something that's going to get you a long way in life because not only—I mean, you're going to increase your education, you will increase your vocabulary, a lot of things will go along with that. I encourage you to stay away from the guys in there who will be in trouble. You do not want to get into that crowd, because then when you get out, you're going to follow those ways, and this is going to become a lifestyle for you. If I could have sentenced you to something else, I promise you I would have done that. I want to wish each of you good luck, and keep your head up."

¶ 41 Based on the record, it is clear that the court was mindful of the mitigating evidence presented on defendant's behalf. At the same time, the court acknowledged that armed robbery with a firearm, the offense of which defendant was convicted, was a "very serious offense." Although the court indicated that it would have sentenced defendant to a lesser sentence if able to do so, the court nonetheless recognized that the Illinois legislature has deemed 21 years' imprisonment an "appropriate" minimum sentence for that offense. Ultimately, given that the circuit court retained and clearly exercised its discretion to consider defendant's youth and other

mitigating circumstances prior to imposing a significant sentence, we are unable to conclude based on the current state of the law, that defendant's sentence constitutes cruel and unusual punishment in violation of his eighth amendment rights. See, *e.g., Banks*, 2015 IL App (1st) 130985, ¶ 21; *Pace*, 2015 IL App (1st) 110415, ¶ 134; *Cavazos*, 2015 IL App (2d) 120171, ¶ 100.

¶ 42 We also necessarily reject defendant's related argument that his 21-year sentence violates the proportionate penalties clause under the Illinois State Constitution. That provision mandates that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. "To succeed on a proportionate penalties claim, a defendant must show either that the penalty imposed is cruel, degrading, or so wholly disproportionate to the offense that it shocks the moral sense of the community ***." *People v. Klepper*, 234 Ill. 2d 337, 348-49 (2009). A sentence does not violate the constitutional requirement of proportionality "if it is commensurate with the seriousness of the crime and gives adequate consideration to the rehabilitative potential of the defendant." *People v. St. Pierre*, 146 Ill. 2d 494, 513 (1992). Here, defendant fails to show, and this court is unable to find, that his 21-year sentence is cruel and degrading or wholly disproportionate to the offense that is shocks the moral sense of the community. Although we are not entirely unsympathetic to defendant, the crime of which he was convicted was a serious one. Moreover, we note that the proportionate penalties clause is "coextensive" (*Patterson*, 2014 IL 115102, ¶ 106; *In re Rodney H.*, 223 Ill. 2d 510, 518 (2006)) with the eighth amendment's cruel and unusual punishment clause and conclude that defendant's proportionate penalties argument fails for the same reasons that we found that his eighth amendment challenge also failed. See, *e.g,, Banks*, 2015 IL App (1st) 120985, ¶ 24.

¶ 43 CONCLUSION

¶ 44 The judgment of the circuit court is affirmed.

¶ 45 Affirmed.

¶ 46 PRESIDING JUSTICE MASON, specially concurring.

¶ 47 I agree in the majority's analysis of the issues raised on appeal and in the affirmance of Thornton's conviction and sentence. I do not concur in the observations in footnote three regarding an issue that has not been raised on appeal.