2015 IL App (2d) 120581-U
No. 2-12-0581
Order filed June 4, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DEANTONIO M. LAYNE, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 09-CF-3123 Honorable Ronald J. White, Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in determining which prior convictions and juvenile adjudications for defendant's witnesses were admissible for purposes of impeachment; likewise, the out-of-court exculpatory statements of an occurrence witness were inadmissible under the statement-against-interest exception as they were not sufficiently reliable or trustworthy. Based on these holdings, defendant could not demonstrate that he had been prejudiced by his trial counsel's alleged ineffective assistance, and defendant's murder conviction was affirmed. Defendant's aggregate 80-year sentence was excessive, and it was reduced to an aggregate 68-year sentence.

¶ 2 Following a jury trial, defendant, Deantonio M. Layne, was convicted of the first-degree murder (720 ILCS 5/9-1(a) (West 2008)) of Christopher "Spider" Fryer, personally discharging a handgun to cause his death, and aggravated unlawful use of a weapon (720 ILCS 5/24-

1.6(a)(1)(3)(a) (West 2008)). At trial, defendant had asserted that he shot Spider in self defense, believing that Spider had a gun and was about to shoot him. Defendant was sentenced to an aggregate 80-year term of imprisonment for the murder (55 years for the murder plus the 25-year add-on for personally discharging a handgun resulting in the victim's death (730 ILCS 5/5-5-8(a)(1)(d)(iii) (West 2008)), and a concurrent 3-year term for the unlawful use of a weapon. Defendant appeals the murder conviction, arguing that the trial court erred in determining which prior convictions and juvenile adjudications were proper to use in impeaching his witnesses, that he received ineffective assistance of counsel due to counsel's acquiescence to the trial court's impeachment determinations and for counsel's failure to raise the issue of admitting Ivory Holland's purportedly exculpatory statements at trial, and that his sentence was unconstitutional as applied to him or, alternatively, was excessive. We agree with the trial court's judgment on the impeachment and Ivory Holland issues and thereby affirm on defendant's first two issues. We agree with defendant on the excessive sentencing issue and reduce his sentence.

¶ 3 I. BACKGROUND

¶ 4 The following factual summary is taken from the record on appeal. On August 5, 2009, Christopher Fryer, generally known by his street name of "Spider," was shot to death in front of the Glass family's house, located on Mulberry Street in Rockford, Illinois. The autopsy, conducted by Dr. Mark Peters, revealed that the fatal gunshot entered the right side of Spider's face, at the corner of his mouth. It tore through his mouth and neck, exiting on the left posterior side of Spider's neck, beneath the left corner of his jaw. As the bullet exited, it lacerated the external carotid artery, and Spider quickly bled to death.

¶ 5 According to the State's theory of the case, the events that caused Spider's death were precipitated by an incident occurring before the shooting at the Glass house. Doray Kitchen

testified that, at the time of 2011 trial, he was 19 years old. On August 5, 2009, Kitchen visited his girlfriend, Natosha Glass, at her home on Mulberry Street. After this visit, he went over to defendant's house. While he was there, Jadale Lamon stopped in. The three, defendant, Kitchen, and Lamon, decided to walk to defendant's grandmother's house.

¶ 6 As they approached the intersection of Henrietta Avenue and Green Street, they encountered a young man known as "Mississippi." Lamon talked to Mississippi. Kitchen testified that Mississippi had a black, nine-millimeter handgun, which he pulled out and displayed. Kitchen expressly testified that Mississippi did not threaten anyone with the gun. Mississippi took the clip from the gun and gave it to Lamon to examine. Lamon returned the gun to Mississippi, and the trio began to walk on toward defendant's grandmother's house.

¶ 7 Kitchen testified that, as defendant passed, he grabbed Mississippi, and Lamon "jumped in." Defendant and Lamon took the gun from Mississippi. According to Kitchen, defendant pointed the gun at Mississippi's face and pulled the trigger, but the gun did not fire. Mississippi took to his heels, and defendant pointed the gun in the air and shot twice. Kitchen testified that Mississippi started to return, but defendant again shot, this time in Mississippi's direction, and Mississippi again ran away. Rockford police officer Scott Olson testified that, at the intersection of Henrietta and Green, he found two spent nine millimeter shell casings.

¶ 8 Kitchen testified that the three completed their walk to defendant's grandmother's house. There, according to Kitchen, defendant stated that he was going to kill some people with the gun. Defendant's mother arrived at the grandmother's house, and she was angry with defendant. Defendant had the gun in his hand when defendant's mother chewed him out.

¶ 9 Kitchen testified that, after this, he returned to Natosha Glass's house by himself. Kitchen reported the incident between the three and Mississippi to Natosha, her sister, Felicia,

and her mother, Tonya. Kitchen thereafter returned to his home.

¶ 10 The State presented several accounts of the fatal events. Natosha Glass (Natosha) testified that, at the time of trial, she was 18 years old, and, at one time, she had dated Kitchen. On the afternoon of August 5, 2009, Kitchen came over to her house, stayed a few minutes and left. After Kitchen left, defendant, who was a friend, came over to her house. Natosha asked defendant if it were true that he had taken a gun from Mississippi. Defendant replied, "No." Natosha testified that she did not see defendant with a gun at that time.

¶ 11 Natosha testified that Shaiqual Layne, defendant's cousin and her then best friend, came over. Natosha, defendant, Shaiqual, and Natosha's sister, Felicia, sat in the living room and talked. Natosha testified that Spider and Bear (also known as Ivory Holland) came to her house. Natosha and Spider were friends, but she knew that defendant and Spider did not get along. Natosha saw Spider through her open front window walking up to her porch. Felicia locked the front door and told Spider to come back later.

¶ 12 At the same time Felicia was telling Spider to come back later, defendant was standing in the front window, waving a black handgun. Natosha testified that Spider put his hands up in the air, and he began to walk away. Natosha testified that, after Spider left the porch and was on the sidewalk, defendant shot his gun through the front window screen. Spider started to run away, defendant went out of the house and out to the street, and fired more shots at Spider, who was running towards Oakwood. Natosha ran after Spider, and she found him lying on the lawn in front of a house on Oakwood.

¶ 13 Natosha acknowledged that, on August 6, 2009, she lied to the police. Specifically, Natosha acknowledged that, on that day, she told police that Lamon was present at her house at the time of the shooting, but that this was actually not true. Natosha testified that Lamon was not

present in her house on the date of the shooting. Natosha maintained that she was telling the truth in her testimony at trial.

¶ 14 Felicia Glass (Felicia) testified that she was 14 years old. On August 5, 2009, at about 2 p.m., defendant came to her house. Felicia testified that defendant made a call on her mother's cell phone, asking someone for a ride. After the call, her mother went to the store. Next, a blue car pulled up and parked in front of her house. It was Shaiqual and her baby; defendant came back into the house. Between three and five minutes later, Spider and Bear came to the house.

¶ 15 Felicia testified that, when Spider showed up, defendant became upset. When Spider came up to the porch, Shaiqual closed the front door. Felicia testified that Bear was standing outside by the front window and yelled at defendant. Defendant was inside by the front window waving a gun toward Bear's head. Spider began to walk away with his hands up in the air. Defendant shot twice at Spider through the front window screen as Spider was walking away. Felicia testified that, after the shots, Spider grabbed his neck. Felicia, Shaiqual, Natosha, and defendant all ran outside. Defendant went in the opposite direction from Spider, but he ran backwards and continued to shoot at Spider. Felicia testified that Spider ran around the corner and then collapsed. Felicia testified that she did not see Spider with a gun, and she did not see anything in Spider's hands.

¶ 16 Felicia too, acknowledged that she lied to the police. Felicia testified that, shortly after the shooting, she spoke to the police and told them that Lamon had been in on the murder. Felicia testified that this was a lie and, actually, Lamon was not present at her house at the time of the shooting. Felicia explained that she lied to the police because she felt pressured to include Lamon in her initial statement.

¶ 17 Tonya Glass (Tonya) testified that, on August 5, 2009, she lived in a house on Mulberry

Street in Rockford, Illinois, along with her daughters, Natosha and Felicia. Tonya testified that, at about 3 p.m. on that date, she left the house. When she left, defendant, Natosha, and Felicia were present in the home. Tonya estimated that she was gone for about 10 or 15 minutes. When she returned, she saw Spider bleeding in front of her house. Tonya testified that she also observed defendant to be standing outside on the sidewalk by her porch shooting at Spider. Tonya testified that Spider ran around the corner onto Oakwood.

¶ 18 Various officers and detectives of the Rockford police department testified about the evidence found at the scene of the crime. Officer Joseph Danforth testified that he responded a shooting near Oakwood. He testified that the shooting actually occurred around the corner on Mulberry, about 200 feet from where Spider was initially found by the police. Officer Cornelius Mathews found a pool of blood in front of the Glass home and a spent bullet casing on Mulberry in front of the home. Officer Patrick Girardi testified that there were three spent shell casings on the porch of the Glass house. An additional spent shell casing was found inside the Glass home on the window sill below a hole in the window screen. All of the officers testified that they were unable to find any firearms at the scene of the shooting.

¶ 19 Marcus Causey testified that he was friends with Marcus Anderson and defendant. Causey knew a woman named "Sylvest" as a result of his association with defendant. Causey testified that, on August 5, 2009, as a result of seeing the body on Oakwood, he met with Anderson, Sylvest, and defendant. Causey testified that, at that time, defendant appeared to be scared and was crying. Defendant had a gun. Defendant gave the gun to Causey for disposal. Causey then gave the gun to Anderson.

¶ 20 Anderson was not a witness at the trial. Instead, Detective Brian Skaggs testified that, in August 2009, he was assisting in the operation of an undercover pawnshop. Skaggs testified

that, on August 6, 2009, Anderson came into the pawnshop and sold a nine millimeter handgun. Skaggs also noted at the time that Anderson was driving a car registered to Sylvester "Lane" (probably correctly spelled, "Layne"). The gun was submitted for testing. Russell McLain testified that he was a forensic scientist in firearm and tool-mark identification working for the Illinois State Police crime lab. McLain testified that he examined the gun Anderson sold to the police's undercover pawnshop, and he compared test firings with the spent shell casings recovered from Mulberry Street and Henrietta Avenue. McLain testified that he determined that the shell casings found on Mulberry and Henrietta were fired from the gun that Anderson sold to the pawnshop.

¶ 21 Defendant presented a different version of the events, attempting to show that he had acted in self-defense, or at least under the mistaken belief that Spider had a gun and was about to shoot him. Defendant presented evidence concerning the events of August 5, 2009.

¶ 22 Shresha Layne (Shresha) testified that she was defendant's mother. She testified that she had been convicted of (1) obstruction of justice in 2010; (2) obstruction of justice in 2008; (3) making a false 911 call in 2007; and (4) unlawful possession of a controlled substance in 2003.

¶ 23 Turning to the events of August 5, 2009, Shresha testified that Lamon and Kitchen came to her home to see defendant. At about 2 p.m., the three left her home to go to defendant's grandmother's house on Lexington. Later that afternoon, four young men came to Shresha's door. Shresha testified that she recognized one of the young men, Mississippi, who was angry. Shresha testified that Mississippi and the other three young men threatened her as well as defendant, and Shresha was frightened.

¶ 24 Due to Mississippi's and the others' threats, Shresha went to her mother's (defendant's grandmother's) house to find defendant. When she arrived, defendant was on the porch.

Shresha testified that she told defendant that Mississippi and some boys came to their house and said that they would kill defendant unless defendant returned the gun he had taken from Mississippi. Shresha testified that this information frightened defendant, and he began to cry. Shresha told defendant to stay with her sister, Sylvest; she and her father would return to their home. Shresha testified that, about 10 minutes later, after she had returned to her home, Mississippi again knocked on her door. This time, Mississippi was with Spider and Dontonio Lee (Mann). The State, however, presented the rebuttal testimony of Detective Diann Krigbaum that Shresha had told police only that Mississippi had come to her house, but she did not say that Mississippi had threatened defendant's life. Krigbaum also indicated that Shresha told police that she confronted defendant about Mississippi's claim that defendant had stolen his gun, checked defendant, but did not find a gun.

¶ 25 Shaiqual testified that she was defendant's cousin and, at the time of trial, 18 years old. Shaiqual acknowledged that she had a juvenile adjudication for mob action, a conviction for aggravated battery, and a conviction for criminal damage to property.

¶ 26 Shaiqual testified that, on August 5, 2009, she and her daughter, Jakayla, were living with Shaiqual's grandparents on Lexington Street. In the afternoon, Lamon, who was Jakayla's father, Kitchen, and defendant came over to her grandparents' house. Shaiqual testified that defendant was nervous and scared. Later that afternoon, Shresha came over. She was angry, scared, and crying. Shresha talked to defendant. Shaiqual left with her Aunt Sylvest and Sylvest's friend, Anderson. Shaiqual testified that Sylvest drove them to Natosha's house. Shaiqual and Natosha, at that time, were best friends. When Shaiqual arrived at Natosha's house, Natosha, Felicia, and defendant were present.

¶ 27 Shaiqual testified that, about five minutes after she arrived at Natosha's house, Spider

and Bear came to Natosha's house. Shaiqual testified that defendant was surprised and scared when Spider showed up. He and Spider began to argue. Shaiqual testified that both she and Felicia told Spider to leave. Shaiqual testified that, when Spider was on the sidewalk in front of Natosha's house, she saw Spider reach for what she thought was a gun. Defendant, still inside Natosha's house, shot at Spider and then ran outside. She noticed that Spider was bleeding as he ran away. Shaiqual ran after Spider and put her shirt around his neck.

¶ 28 Shaiqual admitted that she lied to the police when she was initially interviewed. Shaiqual acknowledged that she initially told the police that she had seen a black male shoot Spider. Shaiqual acknowledged that she said that she had seen this black male walking on the opposite side of the street from Spider just before the shooting occurred.

¶ 29 In the State's rebuttal evidence of Shaiqual's testimony, Detective Darin Spades confirmed that Shaiqual had first told police that Spider had been alone and that he was shot by an unidentified person. Spades then testified that Shaiqual's story had changed so that Spider and Bear were together, and defendant had been the shooter. Spades also noted that Shaiqual told police that it looked like Spider reached for a gun, but she had not actually seen Spider with a gun.

¶ 30 Defendant testified that, on the date of the shooting, he was 15 years old. On that day, Lamon and Kitchen came to his house. All three went to his grandmother's house. On the way there, they saw Mississippi on Henrietta Avenue. As the three approached, Mississippi pulled out a black handgun. Defendant testified that he was scared because he had been involved in previous altercations with Mississippi. Defendant testified that he heard Mississippi say, "You all got bangers [guns] on deck," at which point defendant became more frightened. Defendant testified that Mississippi made more threats while holding the gun. When Mississippi placed the

gun in his pocket, defendant tackled him and took the gun away from Mississippi. Defendant testified that, because he was unsure if Mississippi would immediately retaliate, he shot the gun twice into the air. Defendant testified that he, Lamon, and Kitchen then ran to his grandmother's house. While at his grandmother's house, Shresha came over and yelled at him. Shresha said that Mississippi and three other boys came to their house and stated that they would kill defendant if he did not return the gun. Defendant testified that he was scared, so he kept the gun for protection.

¶ 31 Defendant testified that, at about 2 p.m., he went to Natosha's house. A few minutes later, Shaiqual was dropped off there by Sylvest and Anderson. While defendant was there with Natosha, Felicia, and Shaiqual, Spider and Bear stopped by. Defendant testified that he noticed Spider on the sidewalk in front of Natosha's house and began to argue with him through the window screen. Defendant testified that he saw Spider draw a silver gun from his waist and point the gun at defendant. Defendant testified that he reacted by drawing his own gun and shooting at Spider through the window because he thought that Spider was going to shoot him. Defendant testified that he shot once from inside of the house, three times from the porch because Bear was jogging by, and one more time into the air as he ran down the steps to the sidewalk. Later, defendant gave the gun to Anderson.

¶ 32 Defendant presented evidence attempting to demonstrate the existence of ill feelings between him and Spider. Shresha testified that, on November 4, 2008, she observed Spider and Mann shoot at her house. She called the police.

¶ 33 Shresha testified that, in the summer of 2009, she drove herself and defendant to the home of her friend, Shauntay Martin, who lived on Henrietta. While visiting with Martin, Shresha talked with a girl named Dominique and with Michael Gillespie, while defendant

remained in the car. As she was speaking with Dominique, Spider and another young man, Kool-Aid, pulled up in a car and jumped out. Both Spider and Kool-Aid had guns. Shresha testified that defendant began screaming that Spider and Kool-Aid were going to kill him, so Shresha got into her car with defendant and drove off. Shresha drove defendant back home, then returned to Martin's house, where she spoke with Spider's uncle. Shresha testified that she did not call the police about this incident because Spider's uncle had assured her that he would speak about the incident with Spider's mother.

¶ 34 Defendant testified about a number of incidents involving Spider. Defendant testified that he had known Spider for about five years. When he and Spider were in sixth grade, they had a physical altercation, and the animosity between the two continued to escalate after that first incident.

¶ 35 Defendant testified that Spider shot a gun at him or his family on a number of occasions. The first incident defendant mentioned occurred in the summer of 2008. Defendant, his brother, Shawnqual, and his uncle, Devante, were at his grandmother's house. Defendant testified that he saw Spider and his friends in his grandmother's back yard. Defendant testified that Spider had a gun and started shooting.

¶ 36 Defendant testified that the second incident was in the same time frame: the summer of 2008. Defendant testified he was again at his grandmother's house, and he was with Shaiqual, Devante, and Shawnqual. Defendant testified that they received a phone call suggesting that they check on their dogs. When they went outside, defendant saw Spider and the same group of young men as in the first incident. Defendant testified that Spider again shot a gun at them.

¶ 37 Defendant testified that the third incident also occurred in the same time frame: the summer of 2008. Defendant testified that he, Shawnqual, and Devante were walking on Oakley

when they encountered Spider, who was with a group of his friends. Defendant testified that Spider pulled out a gun and shot at them.

¶ 38 In rebuttal to this testimony, the State presented Detective Mark Danner and Officer Ryan Cory. Both testified that, in witness statements given to the police for the incidents occurring in March 2008 and April 2008, no one mentioned that Spider was present in the group of people shooting at defendant's family.

¶ 39 Defendant testified that the fourth incident was in November 2008. Defendant testified that he was at his home with his mother, Shresha. Defendant testified that, when Shresha took out the garbage, she saw two young men in the back yard. Defendant testified that he looked out into the back yard and identified the young men as Spider and Mann. Defendant testified that Spider shot twice at his house. Shresha called the police.

¶ 40 In rebuttal to defendant's and Shresha's testimony concerning the November 2008 incident, the State presented Officers Ryan Marco and Christopher Boeke. Both testified that they took statements from defendant and Shresha. In both of defendant's and Shresha's statements police, neither mentioned the presence of Spider among the young men shooting at the house. Instead, Shresha stated that Mann and "Razor" (Marco testified that no one to his knowledge went by the nickname of "Razor") were in the back yard, and defendant did not further try to identify the shooters

¶ 41 Defendant testified that the fifth incident happened a few days later than the previous one. Defendant was at home with Shawnqual, Joyce Morris, and Felicia. Defendant observed a group of young men standing across the street from his house. The group included Spider, Mann, Marquel (who is not otherwise identified in the record), and others. Defendant testified that Spider pulled out a gun, but did not shoot at him on that occasion.

¶ 42 Defendant also testified about an incident that occurred on Henrietta Street in 2009. Defendant testified that he and Shresha had driven to Martin and Gillespie's house. Defendant testified that a young woman, Dominique, was also present. As his mother was speaking with Dominique, Spider and Kool-Aid[1] pulled up in a car and got out. Defendant yelled for his mother to leave because he believed that Spider was going to try and kill him.

¶ 43 Defendant also testified about incidents involving his family, but in which he was not directly involved. Defendant testified that, early in 2009, Shawnqual, Devante, and Shaiqual drove to a store on State Street. Devante stayed in the car while Shawnqual and Shaiqual went into the store. Shawnqual and Shaiqual were exiting the store when Spider and Mann drove past and shot a gun at them.

¶ 44 Another incident occurred in the fall of 2008 and involved Devante and his friend, Dana Simmons. Defendant testified that they were walking on Home Street when Spider, Darrion Gulley and two other young men confronted them. Defendant testified that he had been told that Spider drew a gun and pointed it at Simmons's face.

¶ 45 Michael Gillespie testified on defendant's behalf. Gillespie acknowledged that he had a juvenile adjudication for possession of a stolen vehicle and a conviction of unlawful restraint. Gillespie testified that he had known Shresha for about 10 years. In August 2009, Gillespie was living with Shauntay Martin in her house on Henrietta Street. Shresha drove up to the house in her van; defendant was accompanying Shresha. Gillespie testified that Shresha was out of the van talking to Martin. A car carrying Spider and another young man pulled up, and the two

[1] Defendant testified that he "heard" Kool-Aid's name was Lamarcus Bassett, but he was not positive of Kool-Aid's identity.

stepped out. Gillespie testified that he heard defendant tell Shresha that they needed to leave; Shresha told Gillespie that she had to get defendant out of there and got into her van and pulled away. Gillespie testified that Spider and the other person just stood there, watching.

¶ 46 Shauntay Martin testified that she and Shresha had been friends since she was 12 years old. In August 2009, she had a house on Henrietta Street. Shresha and defendant stopped by in Shresha's van, parking on the street. Defendant stayed in the van while Shresha and Martin talked on her porch. Also present were Martin's step-father and his niece, Dominique. Martin testified that they were all talking when she heard defendant scream to his mother. Martin testified that Shresha ran to the van and drove off.

¶ 47 Shawnqual testified on defendant's behalf, about incidents involving Spider, and the animosity between Spider and his family, especially defendant. Shawnqual first acknowledged that he had juvenile adjudications for retail theft (two separate adjudications), making a false 911 call, burglary (two separate adjudications), criminal damage to property, and aggravated unlawful use of a weapon. Shawnqual also acknowledged that he had a 2009 adult conviction for robbery.

¶ 48 Shawnqual testified that he had known Spider for about five years. He testified that there was open hostility between Spider and his family, and particularly defendant. Shawnqual testified that Spider and his friends had threatened and shot a gun at his family many times. Turning to specifics, Shawnqual recounted an occasion on West State Street. He, Shaiqual, Devante, and Samantha (who is not otherwise identified in the record) were in a car and parked it at a store on West State. Shawnqual went into the store. There, he heard Samantha screaming. When Shawnqual left the store, he saw Spider and Mann across the street, holding guns. Shawnqual testified that Spider and Mann started shooting their guns.

¶ 49 Shawnqual testified that, on November 4, 2008, defendant had a fight with Mann. He and defendant went home and told Shresha. Shresha told them to stay inside. About 15 minutes later, Shresha saw someone in front of the house. Shawnqual testified that he looked and identified the people as Spider and Mann. Shawnqual testified that both Spider and Mann had guns, which they shot.

¶ 50 Shawnqual further testified that he never called the police about these incidents, but noted that his mother had called the police a few times. Shawnqual testified that every time the police had been called, he did not want to talk with them. Shawnqual explained that he did not want to talk to the police because the police either would not believe him or would lock him up.

¶ 51 Devante testified for defendant that he was 18 years old. He acknowledged that he had juvenile adjudications for making a false 911 call, retail theft, aggravated battery, burglary, and criminal damage to property. Devante also testified that he had a 2009 adult conviction of aggravated battery with a firearm.

¶ 52 Devante testified that he knew Spider and that he did not get along with him. Devante testified that Spider had shot at and threatened him and his family on nine occasions. Devante testified that he did not report the incidents to the police, but he was aware that his mother had reported some of them. Devante explained that he did not call the police because he did not want to get involved. Devante testified that, in June 2009, Spider, Mississippi, and five other young men had knocked him down and had kicked him.

¶ 53 The State presented a total of nine rebuttal witnesses; the rebuttal testimony of the police witnesses has been recapitulated with the appropriate witness testimony. The State also presented two witnesses, Candice Graham, who worked at the Winnebago County juvenile detention center, and Paul Carpenter, a lawyer who represented Spider in juvenile court on

November 5, 2008. Graham testified that, from June 17, 2008, to August 5, 2008, Spider was in custody of the detention center. The clear import of this testimony was that Spider was not free to commit any shootings during that period in the summer of 2008. Similarly, Carpenter testified that, on November 5, 2008, Spider was in custody before his court appearance and was released on that date. The inference sought to be drawn from this testimony was that Spider was in custody on November 4, 2008, a date that defendant and Shresha gave police statements about young men shooting at their house.

¶ 54 Following the above-summarized events, defendant was eventually indicted and charged with, among other things, first degree murder and aggravated unlawful use of a weapon. In the run-up to trial, the State filed a number of motions *in limine* seeking to determine the admissibility of prior juvenile adjudications and prior convictions for purposes of impeaching various witnesses. During the course of the hearing, the trial court analyzed the prior convictions for various witnesses under the strictures of Illinois Rule of Evidence 609 and *People v. Montgomery*, 47 Ill. 2d 510 (1971). Defendant highlights some of the trial court's statements, particularly concerning juvenile adjudications for witnesses (as opposed to juvenile adjudications for defendant), noting that the State quoted Rule 609(d) (Ill. R. Evid. R. 609(d) (eff. Jan. 1, 2011)) to the trial court, with defendant emphasizing the portion of the rule that states that juvenile adjudications are not generally admissible unless the court is satisfied that the admission of the juvenile adjudication is necessary for a fair verdict. The trial court acknowledged that it believed it was following the rule and the case law, stating, "I guess that's what I have said. It is discretion with the court and looking at the *Montgomery* standard when it comes to a witness, [rather than] a defendant."

¶ 55 The matter progressed to trial, and the above-summarized testimony was elicited.

Following Martin's testimony and before Shawnqual's testimony, defendant attempted to call Bear (Ivory Holland) as a witness. Bear, who was in custody on pending charges, invoked his Fifth Amendment right to not testify. Defendant's counsel attempted to maneuver around Bear's invocation of his right to not testify, informing the court that Bear had been in custody with Shawnqual and had purportedly informed Shawnqual that Spider was actually carrying a gun at the time of the shooting, and that he had taken the gun off of Spider and disposed of it after Spider was shot. The trial court stated that any such testimony was hearsay and would not be admissible unless it fell under an exception to the rule against hearsay. Defendant's counsel acquiesced and agreed that Shawnqual's testimony about Bear's purported statements would be hearsay because Bear had invoked his right to not testify pursuant to the Fifth Amendment.

¶ 56 Following the presentation of evidence, the jury found defendant guilty of both first degree murder and aggravated unlawful use of a weapon. Defendant's motion for a new trial was denied and the trial court sentenced defendant to an aggregate term of imprisonment of 80 years: 55 years for the first degree murder plus 25 years for the mandatory enhancement due to personally discharging a firearm that caused the victim's death. The trial court also sentenced defendant to a concurrent 3-year term of imprisonment on the aggravated unlawful use of a weapon conviction. Defendant filed a motion to reconsider sentence, and this motion was denied. Defendant appeals.

¶ 57 II. ANALYSIS

¶ 58 On appeal, defendant raises three issues. First, defendant challenges the trial court's decisions regarding the admissibility of some of the prior convictions and juvenile adjudications determined for defense witnesses during the hearing on the State's motions *in limine*. Next, defendant contends trial counsel provided ineffective assistance because he acquiesced to the

trial court's erroneous determinations regarding the admissibility of the prior convictions and juvenile adjudications for certain defense witnesses, and because trial counsel acquiesced to the trial court's determination of the inadmissibility of Bear's purported statement that he knew Spider had a gun at the time of the shooting and he took that gun off of Spider after he was shot. Last, defendant contends that his aggregate 80-year sentence was the result of an unconstitutional application of the sentencing statutes to him or, alternatively, was excessive. We consider each contention in turn.

¶ 59 A. Timeliness of Appeal

¶ 60 As an initial matter, we note that there may be a question regarding this court's jurisdiction over this appeal. We note that, on September 20, 2011, the jury returned guilty verdicts as noted above. Defendant timely filed a motion to reconsider, and, on October 20, 2011, this motion was denied, and defendant was sentenced. On November 18, 2011, at a status hearing, defense counsel stated that he had nearly completed defendant's motion to reconsider sentence. The trial court set the as yet unfiled motion to reconsider sentence for a December 22, 2011, hearing. The record shows that, on December 22, 2011, the motion to reconsider sentence was finally filed. The hearing on that motion was continued from time to time, and, on May 22, 2012, the motion was heard and denied. Defendant filed his notice of appeal on that same date.

¶ 61 Reviewing the timing of the various motions, it appears that the motion to reconsider sentence was not timely filed. Reviewing the record, however, reveals that defendant was effectively seeking an extension of time in which to file the motion to reconsider sentence. The trial court implicitly granted defendant more time, and set the motion for a December 22, 2011, hearing. We note that, at no time, either during the November 18, 2011, hearing during which defendant effectively sought an extension of time, or the December 22, 2011, was the timeliness

of the motion to reconsider sentence challenged. Accordingly we determine that, at worst, the State acquiesced to defendant's request for additional time in which to file the motion to reconsider sentence, and we hold that we have jurisdiction over this appeal, despite the apparent issue regarding the timeliness of the motion to reconsider sentence.

¶ 62 B. Impeachment

¶ 63 Turning to defendant's first issue on appeal, defendant contends that the trial court did not properly consider the appropriate factors, either under the Illinois Rules of Evidence or under established case law, regarding the admissibility of prior convictions and juvenile adjudications to be used as impeachment for defendant's witnesses. The Rules of Evidence state, pertinently:

> "For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime, except on a plea of *nolo contendere*, is admissible but only if the crime, (1) was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, or (2) involved dishonesty or false statement regardless of the punishment unless (3), in either case, the court determines that the probative value of the evidence of the crime is substantially outweighed by the danger of unfair prejudice." Ill. R. Evid. R. 609(a) (eff. Jan. 1, 2011).

In addition, the same rule covers the trial court's consideration of juvenile adjudications:

> "Evidence of juvenile adjudications is generally not admissible under this rule. The court may, however, allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission in evidence is necessary for a fair determination of the issue of guilt or innocence." Ill. R. Evid. R. 609(d) (eff. Jan. 1, 2011).

Finally, the committee comments to Rule 609 indicate that this rule is meant to be a codification of the common law and existing case authority, as exemplified by *People v. Montgomery*, 48 Ill. 2d 510 (1971). Ill. R. Evid. R. 609, Committee Comments (adopted Jan. 1, 2011). Further elucidation of the *Montgomery* balancing rules codified in Rule 609 suggest that, when the trial court is considering the probative value of the evidence against the prejudicial effect, it should look at, among other things, the nature of the prior conviction or adjudication, the nearness or remoteness of the prior offense to the present charge, the witness's criminal record, especially subsequent to the impeaching conviction or adjudication, and whether the prior offense was similar to the one charged. *People v. Mullins*, 242 Ill. 2d 1, 14-15 (2011). We also note that the committee comments reference the existence of an unresolved issue regarding the use of juvenile adjudications against a defendant-accused at trial, but that is not of issue here. Ill. R. Evid. R. 609, Committee Comments (adopted Jan. 1, 2011). Last, we review the trial court's decisions on whether to allow evidence of specific convictions for purposes of impeachment for an abuse of discretion. *People v. Meyers*, 367 Ill. App. 3d 402, 415 (2006).[2]

[2] Defendant argues that the standard of review is *de novo* based on *People v. Whirl*, 351 Ill. App. 3d 464, 467 (2004). There, the appellate court held that the trial court had not even exercised its discretion, but improperly admitted evidence of prior convictions as impeachment in a mechanical manner, which it reviewed without deference to the trial court. *Id.* Because we conclude that here, the trial court properly considered the appropriate factors and affirmatively exercised its discretion in considering which convictions could be admitted into evidence for impeachment purposes, *Whirl* is inapposite, and we follow *Meyers*.

¶ 64 As an initial matter, we note that defendant has forfeited review of this issue because he neither objected to the trial court's determinations on prior convictions and juvenile adjudications at trial nor included his contentions in a posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Defendant nevertheless seeks to have the issue reviewed under the plain-error doctrine.

¶ 65 The plain-error doctrine provides that a forfeited claim may be reviewed under two circumstances: (1) when a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error; or (2) when a clear or obvious error occurred and that error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the strength of the evidence. *People v. Johnson*, 238 Ill. 2d 478, 484 (2010). The purpose of the plain-error doctrine is to ensure that a defendant receives a fair trial, but a defendant is not guaranteed a perfect trial. *Id.* It is not intended to be a general savings clause, but rather, it is construed as a narrow and limited exception to the forfeiture rule applicable to unpreserved claims of error. *Id.*

¶ 66 When seeking review under the plain-error doctrine, a defendant carries the burden of persuasion to show that the forfeiture should be excused. *Id.* at 485. If the defendant fails to meet his or her burden of persuasion, the procedural default will be honored, and the issue will be deemed forfeited. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). The first step in considering a defendant's invitation to review a forfeited issue under the plain-error doctrine is to determine whether an error occurred. *Id.*

¶ 67 In this case, the State filed motions *in limine* for all of the civilian witnesses, its own and defendant's, seeking to determine the admissibility of their prior convictions and juvenile

adjudications (where applicable). Defendant argues that the trial court did not properly apply the *Montgomery* factors set forth in Rule 609 to each of his witnesses. We note that our supreme court has repeatedly urged trial courts to avoid the mechanical application of the *Montgomery* factors to admit any and all convictions and juvenile adjudications for purposes of impeaching the witnesses. *Mullins*, 242 Ill. 2d at 15-16. In spite of the admonition against mechanical application, our supreme court has rejected the notion that the trial court must explicitly reference the *Montgomery* factors when determining the admissibility of prior convictions and adjudications for impeachment purposes. *Id.* at 16. Rather, the record must clearly show that the trial court was employing the *Montgomery* factors in making its determination. *Id.*

¶ 68 In conducting the hearing on the State's motions *in limine* seeking to determine the admissibility of prior convictions and juvenile adjudications for all of the State's and defendant's civilian witnesses, the motions cited to *Montgomery* and specifically mentioned the appropriate factors to be considered, namely the factors that qualify a prior conviction to be used and the balancing test to determine with the probative value of the prior conviction or juvenile adjudication is substantially outweighed by the danger of unfair prejudice (Ill. R. Evid. R. 609(a) (eff. Jan. 1, 2011); *Montgomery*, 47 Ill. 2d at 516), as well as the consideration for the admissibility of a juvenile adjudication, namely, whether it is necessary for a "fair determination of guilt" (Ill. R. Evid. R. 609(d) (eff. Jan. 1, 2011)).

¶ 69 The trial court considered each of the motions *in limine* individually, and the trial court expressed its understanding of the *Montgomery*/Rule 609 factors throughout the hearing. As an example, the trial court clarified the nature of the prior offense in the State's motion *in limine* concerning Marcus Anderson, whom the State decided not to call as a witness, and determined that it was an offense involving dishonesty and qualified as admissible impeachment evidence.

Similarly, in the discussion over the motion *in limine* concerning Causey (who did testify for the State), the court was expressly requested to balance the "probative value over [the] prejudicial effect" of a 2005 aggravated discharge of a firearm conviction that the defense wanted to use as impeachment. In discussing the admissibility of juvenile adjudications for disorderly conduct, criminal damage, curfew violation, and intimidation to impeach Cortavian Walker (who did not testify), the State specifically discussed the Rule 609(d) standard regarding the requirement that the trial court be satisfied that the admission of the juvenile adjudication is necessary for a fair determination of the issue of guilt or innocence. The trial court agreed and asserted "that's what [it had] said," and noted that the determination was discretionary.

¶ 70 Continuing, the trial court noted that Kitchen's prior convictions of possession with intent to deliver cannabis, criminal damage to property, and attempted burglary were admissible for impeachment purposes. The trial court reasoned that the three convictions "would be probative and the prejudicial effect would not outweigh the probative value." Regarding Felicia's prior adjudications, the trial court noted that the parties agreed that the adjudications for assault, aggravated assault, and criminal damage to property would not be admissible. The trial court also noted that Felicia had a pending petition to vacate probation, and it determined this was admissible because it went to the issue of whether Felicia had received a deal for her testimony. Regarding potential witness Felicia Bedford (who did not testify), the trial court excluded a conviction within the 10-year *Montgomery* and Rule 609 window upon express consideration of the *Montgomery* factors.

¶ 71 Based on our review of the hearing on the State's motions *in limine*, we conclude that the trial court appropriately considered the correct factors in determining which convictions and juvenile adjudications would be admissible to impeach the various witnesses' testimony. We

note that the trial court did not expressly state it was considering the Rule 609 and *Montgomery* factors for each witness, but throughout the hearing, it clearly and correctly discussed the factors, including the probative value versus the prejudicial effect balancing required by *Montgomery* and Rule 609, as well as the extra requirement in Rule 609(d) that a juvenile adjudication be necessary for a fair determination on the issue of guilt or innocence. We conclude that the trial court was both aware of all of the appropriate factors and considerations and it used them in making its determination. This holding is amply supported by the record of the hearing on the motions *in limine*. Accordingly, we reject defendant's contention that the trial court either mechanically applied the *Montgomery* rule or did not appropriately consider the factors to be used in determining the admissibility of prior convictions and juvenile adjudications. As a general matter, then, defendant has not demonstrated that the trial court erred in its determinations regarding whether prior convictions and juvenile adjudications were admissible for purposes of impeachment. Because defendant has not shown that an error occurred, he has not passed the first step of consideration of whether the plain-error doctrine can excuse his procedural default.

¶ 72 We next consider defendant's specific arguments, both relating to the trial court's general errors in the conduct of the hearing on the motions *in limine* and his contentions regarding specific witnesses. Defendant first argues that the trial court "almost exclusively relied on whether the offense qualified as a felony or was a misdemeanor that reflected on truth or veracity, and whether [the] offense fit within the *Montgomery* 10-year period." We note two flaws in this argument. The first flaw is "almost," which implies that the trial court must have expressly balanced the probative value against the prejudicial effect at least once, and we noted that that the trial court invoked the probative-prejudicial balancing in considering which

convictions were admissible against Causey. Thus, the argument is somewhat self-defeating. The second flaw is that the trial court is not under an obligation to expressly state how it is employing the *Montgomery*/Rule 609 factors. *Mullins*, 242 Ill. 2d at 16. Further, the trial court need only show that it was aware of and following the factors generally to pass muster. See *People v. Neely*, 2013 IL App (1st) 120043, ¶ 19 ("Absent an express indication that the trial court was unaware of its obligation to balance [the *Montgomery*/Rule 609] factors, a reviewing court will assume that the trial court gave the factors appropriate consideration") Here, we have carefully reviewed the hearing on the motions *in limine* in which the trial court determined which prior convictions or juvenile adjudications would be admissible for purposes of impeachment, and we determined that, even though the trial court did not expressly go through all of the factors it was considering in each case, it nevertheless expressly demonstrated that it was properly considering the factors and that it grasped the appropriate principles and understood its role in the hearing. We therefore reject defendant's argument on this point.

¶ 73 Defendant argues that the trial court misapprehended the law concerning the admissibility of juvenile adjudications. We first note that defendant did not cite relevant authority delineating exactly what that law might be (aside from its general citation to the Rule 609(d) requirement that "admission in evidence is necessary for a fair determination of the issue of guilt or innocence" (Ill. R. Evid. R. 609(d) (eff. Jan. 1, 2011)). Thus, we are not satisfied with defendant's compliance with the requirement to cite pertinent authority to support an appellate argument. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *People v. Robinson*, 2013 IL App (2d) 120087, ¶ 15. Procedural default notwithstanding, defendant's contention is belied by considering the entirety of the hearing, and not only the two disjointed paragraphs defendant wrenches from their context and quotes together. Viewing the trial court's entire conduct of the

hearing, we conclude that it was both aware of the specific requirements for handling juvenile adjudications and it properly employed those requirements, even if it did not expressly utter the words, "admission in evidence is necessary for a fair determination of the issue of guilt or innocence." As we noted above, the State specifically quoted the "fair determination" provision from Rule 609(d), and the trial court acknowledged the standard and agreed that it was observing it. Additionally, our review of the record convinces us that the trial court was actually employing the correct standard regarding juvenile adjudications. Accordingly, we reject defendant's contention.

¶ 74 Defendant next turns to his individual witnesses and argues that the trial court abused its discretion in determining which prior convictions or juvenile adjudications would be admissible for purposes of impeachment. Defendant first argues that the trial court improperly allowed the State to impeach Shawnqual with seven juvenile adjudications. While we may have balanced the probative values against the prejudicial effects differently, we perceive no abuse of discretion. See *People v. Wheeler*, 226 Ill. 2d 92, 133 (2007) (an abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would adopt the trial court's view). Likewise, we perceive no abuse of discretion in the trial court's determination that the adjudications were necessary for a fair determination of the issue of guilt or innocence. *Id.*

¶ 75 With Shawnqual, defendant specifically attacks the trial court's determination that his adjudication for aggravated unlawful use of a weapon was admissible for purposes of impeachment. Defendant argues that the name of the offense is misleading and unduly prejudicial, especially in light of the fact that Shawnqual was defendant's brother. Defendant also contends that the prejudice accruing to Shawnqual's credibility may have leaked over onto

defendant's by virtue of their fraternal relationship. We disagree. We note that the jury was instructed that prior adjudications were to be considered only as to its effect on the witness's credibility. The jury is presumed to follow the trial court's instructions (*People v. Taylor*, 166 Ill. 2d 414, 438 (1995)), and nothing in the record suggests that the jury did not follow the instructions. Likewise, we see nothing in the record that suggests that, because Shawnqual's credibility was impeached by his prior adjudications, the jury would have transferred any distaste for Shawnqual onto defendant.

¶ 76 Defendant also argues that, as regards impeachment, "[juvenile] adjudications do not have the same probative impeachment value as adult convictions." Defendant does not cite to relevant authority to support this particular point. Instead, defendant cites to cases and articles that support the point that children are different and more plastic than adults, which actually says nothing about the probative value of a juvenile adjudication as compared to that of an adult conviction. Because defendant cited to no relevant authority, we deem this argument forfeited. Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *Robinson*, 2013 IL App (2d) 120087, ¶ 15. Accordingly, we conclude that the trial court did not abuse its discretion in determining the admissibility, for impeachment purposes, of Shawnqual's prior juvenile adjudications.

¶ 77 Defendant next challenges the trial court's determination of admissible prior convictions and adjudications for Shaiqual, defendant's cousin. Defendant first argues that the trial court should have found the prejudicial effect of Shaiqual's convictions for aggravated battery and criminal damage to property to outweigh their probative value, because they "are inherently prejudicial and do not bear directly on truthfulness as a witness." We first note that Rule 609(a) and the *Montgomery* rule require that the prejudicial effect *substantially* outweighs the probative value for the conviction to be excluded. Ill. R. Evid. R. 609(a) (eff. Jan. 1, 2011). Even

accepting defendant's contention that the convictions were inherently prejudicial, defendant does not argue that their prejudicial effect *substantially* outweighs their probative value. Further, the jury was instructed as to the purpose of the admission of the prior convictions and we presume the jury considered the convictions only as they impacted Shaiqual's credibility. *Taylor*, 166 Ill. 3d at 438. Defendant cites to *People v. Adams*, 281 Ill. App. 3d 339, 345 (1986), in support of his argument that the trial court should not have allowed Shaiqual's aggravated battery conviction to be used as impeachment. *Adams* is readily distinguishable: there, the State impeached the defendant with the aggravated battery conviction, but here, the State impeached a witness with an aggravated battery conviction; there, the court was concerned that the jury would impermissibly think that, because the defendant had committed a crime before, he was likely to have committed the crime at issue; here, that concern is not present as Shaiqual was only a witness, and not the defendant.

¶ 78 Defendant also challenges the trial court's stated rationale with regard to Shaiqual's priors. We have considered whether the trial court properly considered and applied the *Montgomery*/Rule 609 factors above and concluded that the record, on the whole, demonstrates that it did. Further, the trial court is not required to expressly indicate each step of its analysis regarding the admissibility of prior convictions and adjudications. *Neely*, 2013 IL App (1st) 120043, ¶ 19. Viewing the trial court's statements in the context of the hearing, rather than disjointed and wrenched from context, we find nothing that would support the contention that it abused its discretion regarding Shaiqual. Accordingly, we reject defendant's argument.

¶ 79 Defendant next contends that the trial court erred in allowing Shresha's prior convictions into evidence for purposes of impeachment. Defendant argues that the prejudicial effect substantially outweighed the probative value. We disagree. We find nothing in the record to

suggest that the trial court abused its discretion in applying the *Montgomery*/Rule 609 factors to Shresha's prior convictions. Defendant also argues that Shresha's conviction for unlawful possession of a controlled substance should have been excluded, citing to *O'Bryan v. Sandrock*, 276 Ill. App. 3d 194, 196-97 (1995). We find *O'Bryan* to be distinguishable, because there, the witness being impeached with the drug possession conviction was the plaintiff; here, by contrast, the witness being impeached is not the defendant, and the concern of unfair prejudice accruing to defendant due to his mother's drug possession is, at best, only slight, if not altogether nonexistent. We reject defendant's contentions concerning Shresha's prior convictions.

¶ 80 Defendant raises similar concerns regarding the impeachment of Devante with his prior conviction and adjudications. Defendant argues that the trial court did not expressly explain why the adjudications were allowed to be admitted into evidence for impeachment purposes. We again note that the trial court does not have to explain every step in its analysis (*Neely*, 2013 IL App (1st) 120043, ¶ 19), and we have determined that the trial court appropriately considered the factors, including those governing the admissibility of juvenile adjudications. Accordingly, we find no abuse of discretion attributable to the lack of an explanation. Additionally, defendant points to the exchange between defense counsel and the trial court as evidence that the court improperly considered the admissibility of Devante's prior conviction and adjudications. We reject the argument on this point, because it overlooks both that the trial court need not explain all of the steps in its analysis, and we have determined that the trial court was considering the appropriate factors, including those for prior juvenile adjudications.

¶ 81 Defendant also complains that the trial court did not give voice to the reasons behind its decision to allow Gillespie's juvenile adjudication for possession of a stolen vehicle and his conviction for unlawful restraint. Once again, we note that the trial court is not required to

explain every step of its reasoning, but only to demonstrate that it grasped the correct factors and made the proper applications (*id.*). We reject defendant's contention regarding Gillespie.

¶ 82 Next, defendant attempts to justify why we should view this case as analogous to *Whirl*. *Whirl* applies to a case in which the trial court abdicates its discretion and only mechanically applies the *Montgomery*/Rule 609 factors. See *Whirl*, 351 Ill. App. 3d at 467-68 (the court found that the trial court did not exercise its discretion, but only mechanically applied the felony/untruthfulness and remoteness factors) Here, the record amply supports that the trial court exercised its discretion in determining which prior convictions and juvenile adjudications would be admissible for purposes of impeachment. *Whirl*, therefore, is inapposite.

¶ 83 Defendant argues that the mechanical application of factors in determining the admissibility of prior convictions and adjudications rises to the level of an error so serious that it undermines the judicial system, and is thus eligible for review under the appropriate prong of the plain-error doctrine. We note that defendant made his argument in the proper order: namely, he attempted to show the existence of error before assigning it to one or both prongs of the plain-error doctrine. However, we also note that defendant failed to carry his burden of persuasion in demonstrating that the complained-of conduct constituted error. Because defendant did not demonstrate the existence of error, his argument that we may also consider his assignments of error under the closely-balanced-evidence prong of the analysis under the plain-error doctrine need not be considered.

¶ 84 Because we have determined that the trial court appropriately exercised its discretion in accord with the proper factors and considerations, we conclude that the complained-of conduct does not constitute error. Because there is no error, we cannot proceed under the plain-error doctrine (*Hillier*, 237 Ill. 2d at 545 (the first step in the analysis under the plain-error doctrine is

to determine whether the complained-of conduct constitute error)). Accordingly, we deem defendant's contentions on appeal regarding the admissibility of prior convictions and juvenile adjudications for purposes of impeachment to be procedurally defaulted.

¶ 85 C. Ineffective Assistance

¶ 86 Defendant next turns to the issue of ineffective assistance of trial counsel. Defendant argues that counsel was ineffective because he failed to ask the trial court to limit the use of prior convictions and juvenile adjudications as impeachment against certain of his witnesses. Defendant also argues that trial counsel was ineffective for failing to ask the trial court to admit Bear's hearsay statement about Spider having a gun at the time of shooting pursuant to an exception to the rule against hearsay. We address each contention in turn.

¶ 87 When considering an ineffective-assistance challenge, we review it under the familiar standard of *Strickland v. Washington*, 466 U.S. 668, 694 (1984). We review an ineffective-assistance claim in light of all of the circumstances of the case. *People v. Cunningham*, 191 Ill. App. 3d 332, 337 (1989). We employ the *Strickland* standard as follows: first, a defendant alleging that he received ineffective assistance of counsel must demonstrate that counsel's performance was deficient, meaning that it fell below an objective standard of reasonableness; second, a defendant must establish a reasonable probability that he was prejudiced. *People v. Fillyaw*, 409 Ill. App. 3d 302, 311-12 (2011). The defendant must prevail on both prongs of the *Strickland* analysis; consequently, the reviewing court may proceed on either prong, and need not continue the inquiry into the remaining prong if the defendant has made an insufficient showing as to the other prong. *People v. Gonzalez*, 339 Ill. App. 3d 914, 922 (2003).

¶ 88 Turning to defendant's first ineffective-assistance claim, defendant argues that his trial counsel was ineffective for failing to limit the convictions and juvenile adjudications used to

impeach the defense witnesses. In defendant's first issue on appeal, we determined that there was no error associated with the trial court's determination regarding the prior convictions and juvenile adjudications. In the absence of error, defendant cannot make a sufficient showing that there was a reasonable probability that he was prejudiced as a result of the trial court's determination regarding the use of prior convictions and juvenile adjudications. Accordingly, we hold that defendant's ineffective assistance claim based on the prior convictions and juvenile adjudications of the defense witnesses fails. See *id.*

¶ 89 Defendant's remaining ineffective-assistance claim concerns the hearsay statement of Bear regarding Spider and whether Spider had a gun at the time of the shooting. Defense counsel made an offer of proof that Bear would have testified that Spider had a gun at the time of the shooting, and that he had taken the gun off of Spider after Spider was shot. The admission of such information at trial would have certainly bolstered defendant's claim of self defense. When Bear was called to testify, however, he invoked his Fifth Amendment right refuse to incriminate himself, and he refused to testify. Bear was further admonished that, if he did testify, he could face liability for offenses including accountability for the murder of Spider and obstruction of justice for removing the gun.

¶ 90 Defense counsel then informed the court that Bear had been in custody with Shawnqual, that Bear told Shawnqual that he had been with Spider at the time of the shooting, that Spider had a gun at that time, and that he had taken the gun off of Spider after Spider had been shot. The trial court responded that Bear's purported statements to Shawnqual were hearsay, and they would be inadmissible absent an exception to the rule against hearsay. Defense counsel agreed with the trial court's assessment, noting that, because Bear had invoked his right against self-incrimination, he could not be cross-examined, and so counsel could not ask Shawnqual about

Bear's statements because he could not also question Bear about them. Counsel stated that he could not "get into" Bear's statements if he could not "put [Bear] on the stand." Defense counsel thereafter "gave up on trying to get [Bear's statements] before the jury."

¶ 91 Defendant argues that trial counsel provided ineffective assistance because he accepted that Bear's statements were hearsay, and that he could not bring the statements before the jury. Defendant argues that the statements should have been admissible pursuant to the statement-against-interest exception to the rule against hearsay. Ill. R. Evid. R. 804(b)(3) (eff. Jan. 1, 2011). Rule 804(b)(3) provides, pertinently, that:

> "[a] statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered in a criminal case is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement." Ill. R. Evid. R. 804(b)(3) (eff. Jan. 1, 2011).

¶ 92 Defendant argues that Bear's hearsay statements to Shawnqual were sufficiently trustworthy to pass muster under the statement-against-interest exception. Defendant argues that it was sufficiently corroborated that Bear was with Spider at the time of the shooting; further, it could have been easily ascertained whether Bear and Shawnqual were in juvenile detention together, and, if not, the State would surely have exposed that fact. Defendant further contends that Bear's hearsay statements were corroborated by the testimony, from both Shaiqual and Detective Spades that Shaiqual told Spades that, at the time of the shooting, it appeared to her

that Spider was reaching for a gun. Defendant further notes that Bear's statements would have subjected him to potential criminal liability, such as charges of unlawful use of a firearm, obstruction of justice, or theft from the person. Defendant also contends that Bear's invocation of his right to remain silent and not testify is itself corroborative of the trustworthiness of the statements, because, according to defendant, if Bear had not seen Spider with a gun, then he could not have been subjected to any criminal liability if he testified. Defendant argues that the only reason for Bear to have refused to testify "was because he had seen [Spider] with a gun and had taken the gun from [Spider] after [Spider] was shot by defendant." Defendant concludes that Shawnqual's hearsay testimony about Bear's statements to him in the juvenile detention center were admissible under the statement-against-interest exception to the rule against hearsay (Ill. R. Evid. R. 804(b)(3) (eff. Jan. 1, 2011)). We disagree.

¶ 93 The common law rules regarding hearsay and its exceptions have been codified into the Illinois Rules of Evidence. *People v. Leach,* 2012 IL 111534, ¶ 66 n.1. Thus, Rule 804(b)(3) incorporates the common law principles surrounding the statement-against-interest exception, which we will now examine. See *id.*

¶ 94 Generally, the unsworn, out-of-court statement against the declarant's interests, including penal interests, is inadmissible. *People v. Tenney,* 205 Ill. 2d 411, 433 (2002). Such a declaration, however, will be admitted where justice requires. *Id.* The basis for this rule is the belief (which has been subject to scholarly criticism) that statements made that subject the declarant to criminal liability are often motivated by extraneous considerations and are not considered to be inherently reliable, unlike a statement against the declarant's pecuniary or proprietary interest. *Id.*

¶ 95 Nevertheless, where constitutional rights that directly affect the determination of guilt are at issue, the rule against hearsay may not be mechanically applied to defeat the ends of justice. *Id.* at 434. Where hearsay testimony bears substantial and persuasive indications of trustworthiness and it is critical to the defendant's case, its exclusion deprives the defendant of a fair trial in accord with due process. *Id.* Such testimony may be admissible under the statement-against-penal-interest exception to the rule against hearsay. *Id.*

¶ 96 This explanation of the statement-against-interest exception was originated in *Chambers v. Mississippi*, 410 U.S. 284 (1973). Illinois courts, among others, have viewed the exception narrowly, and are careful to note that the statement-against-interest exception identified in *Chambers* did not do away with the rule against hearsay, but contemplated that unreliable statements would be precluded by the trial court acting as a gatekeeper. *People v. Human*, 331 Ill. App. 3d 809, 816-17 (2002). To that end, *Chambers* set forth the circumstances that would provide sufficient indicia of reliability and trustworthiness to allow the admission of the statement against interest: (1) the statement was made spontaneously to a close acquaintance shortly after the crime occurred; (2) the statement was corroborated by other evidence; (3) the statement was self-incriminating and against the declarant's interest; and (4) there was adequate opportunity for cross-examination of the declarant. *Tenney*, 205 Ill. 2d at 435; *Human*, 331 Ill. App. 3d at 816. The four factors are indicia of reliability and trustworthiness; the fulfillment of all four factors is not necessary in order to find that a statement is trustworthy and the fulfillment of a single factor similarly does not render a statement trustworthy; rather, the trial court, considering the totality of the circumstances, will make the determination whether it considers the hearsay statement to be trustworthy, and this determination is within the trial court's sound

discretion. *Tenney*, 205 Ill. 2d at 435; *Human*, 331 Ill. App. 3d at 816; *People v. Swaggirt*, 282 Ill. App. 3d 692, 700 (1996).

¶ 97 Before turning to an examination of the four *Chambers* factors, a further observation is in order. Reviewing *Tenney*, *Human*, and *Swaggirt*, as well as other cases cited by the parties suggests that each case is subjected to an independent consideration of the circumstances, because the totality of the circumstances in each case differs from the others so that it is unlikely that there will be sufficient factual similarities between cases on which to rely when doing the analysis. In other words, precedent provides the framework of the inquiry but, due to the inherent factual differences between the cases, precedent cannot fill in that framework with sufficiently factually similar examples and the totality of the circumstances of each case must be individually considered. With these principles in mind, we turn to the four *Chambers* factors.

¶ 98 The first factor is whether the statement was made spontaneously to a close acquaintance a short time after the occurrence of the crime. Here, the offer of proof showed that, within two or three months, Shawnqual and Bear were housed together in the juvenile detention center. While they were both in the center, Bear informed Shawnqual that Spider had a gun at the time he was shot, and that Bear took the gun from Spider after he had been shot. There is no evidence regarding the spontaneity of the statement, and there is no evidence regarding the relationship between Shawnqual and Bear. The evidence suggests that Bear and Spider were friends, further suggesting that, because Spider was clearly ill-disposed to Shawnqual's family, he and Bear were likely not on overly friendly terms. Further, the holding of both Shawnqual and Bear in the same facility may have facilitated the opportunity for Bear to make his statements to Shawnqual, but, given the manifest bad blood between Shawnqual and his family and Spider and his friends, it is not likely that Bear and Shawnqual bonded to the point where, for purposes of this factor,

Bear would be deemed a close acquaintance with Shawnqual. See *Swaggirt*, 282 Ill. App. 3d at 701-02 (close acquaintances for purposes of the first *Chambers* factor are generally "friends" of some sort, engaged in each other's daily lives and knowing intimate details of the backgrounds and lives of the each other). Likewise, the spontaneity of the declaration is questionable. There is no offer of proof regarding the circumstances surrounding the statement, only the information that Bear and Shawnqual were in the same place at the same time. Indeed, given the circumstances of the case, it seems odd that Bear, who was with his friend Spider, would tell the brother of his friend's killer that Spider was armed and may have been ready to shoot Shawnqual's brother. In fact, it is so odd, that it may suggest that Bear and Shawnqual were in fact friendly. On the other hand, it is equally likely that Shawnqual could have fabricated the statement and relied on the fact that Bear was likely to claim his privilege to refuse to incriminate himself so that no one would be able to contradict the statement Shawnqual was attributing to Bear. Finally, the time frame is not terribly short; Bear and Shawnqual appear to have lived in roughly the same neighborhood and traveled in similar circles. If Bear were truly friendly with Shawnqual, why would he wait for two or three months until they both happened to be detained in the detention center before offering his statement to Shawnqual? On balance, we do not believe that defendant has fulfilled this first factor.

¶ 99 The second *Chambers* factor is whether the statement was corroborated by other evidence. Defendant argues that Bear's statement was amply corroborated. In support, defendant points to the fact that the testimony was consistent among all of the occurrence witnesses that Bear was present with Spider at the time Spider was shot. Defendant also finds the fact that Bear refused to testify to avoid self-incrimination as corroborative of the trustworthiness of the statement (but we note that defendant does not cite any authority to

support this claim, and our own research has revealed no supporting authority). Defendant also points to the fact that Shawnqual and Bear were in the juvenile detention center together as a further corroborating fact for Bear's statement. We disagree. While Bear's presence at the scene of the shooting is amply established, none of the other substantive facts of his statement are corroborated by evidence in the record. For example, defendant alone testified that he saw Spider with a gun; none of the other witnesses testified that they saw that Spider was carrying a gun. Shaiqual testified only that she saw Spider reach toward his waist as if he were reaching for a gun, but she never gave a statement or testimony that she saw that Spider actually had a gun in his possession at the time of his shooting. Defendant's gun was recovered, but Spider's gun was not recovered. Further, Bear, who purportedly took the gun from Spider after Spider was shot, was not found with a gun, and no gun was discovered around the scene. Natosha and Felicia both testified that they did not see a gun on Spider; instead they gave statements and testified that Spider had raised his empty hands above his head and was retreating at the time defendant shot him. In addition, the physical evidence does not corroborate the presence of Spider's purported gun. The medical examiner testified that Spider was shot in the right side of his mouth with the bullet traveling through his mouth and exiting on the left side of Spider's neck, just below the corner of his jaw. This suggests that Spider was sideways to defendant when he was shot. This physical fact supports the testimony Natosha and Felicia, who both stated that Spider was turning away and beginning to retreat after a face-to-face confrontation with defendant through the window. If Spider had a gun and was reaching for it in the midst of his face-to-face confrontation, it is unlikely that he would be turned sideways to defendant at the moment defendant shot. Thus, we determine that there is little in the way of corroborative evidence.

¶ 100 The third factor deals with whether the statement was against the declarant's interest. Both the State and defendant agree that, had Bear testified, he would have potentially faced criminal liability including obstruction of justice and unlawful use of a firearm. Defendant has clearly fulfilled this factor.

¶ 101 The fourth factor is whether there was an adequate opportunity to cross-examine the declarant. Because Bear invoked his right not to testify, the State was altogether precluded from cross-examining him. See *Human*, 321 Ill. App. 3d at 819-20 (a witness who clearly invokes his right to avoid self-incrimination may not be called to appear before the jury).

¶ 102 Based on our consideration of the factors, we conclude that Bear's purported statement was not reliable or trustworthy enough to be admissible under the statement-against-interest exception to the rule against hearsay. While the purported statement was not in Bear's interest to make because it could have subjected him to further criminal charges, nothing else about it suggests that it was made in circumstances providing considerable assurance of its trustworthiness. There is no indication of spontaneity, no indication that Shawnqual was a close acquaintance, and it was not made shortly after the crime even though Bear and Shawnqual lived in the same neighborhood and appeared to travel in the same or similar circles. Likewise, no evidence in the record corroborated the substance of the purported statement. Accordingly, we hold that the statement would not have been admissible under Rule 804(b)(3), the statement-against-interest exception to the rule against hearsay.

¶ 103 We have held that Bear's hearsay statement was inadmissible. As a result, defendant experienced no prejudice accruing to trial counsel's failure to seek to admit Bear's hearsay statement under the statement-against-interest exception. Because defendant has failed to satisfy

the prejudice prong of the *Strickland* inquiry, we hold that he has not demonstrated that trial counsel provided ineffective assistance. *Gonzalez*, 339 Ill. App. 3d at 922.

¶ 104 D. Improper Sentence

¶ 105 Defendant challenges his sentence as excessive, contending at oral argument that "[t]his is not an exceptional case, and [defendant] received an exceptional sentence." Defendant raises two alternative contentions in his challenge to his sentence: first, defendant challenges the constitutionality of the juvenile transfer statute (705 ILCS 405/5-130(1)(a)(i) (West 2008)), which subjects 15- and 16-year-olds to all applicable adult penalties, resulting, in this case, in an 80-year sentence. Recently, our supreme court passed upon the constitutionality of the juvenile transfer statute. *People v. Patterson*, 2014 IL 115102. The court held that the juvenile transfer statute was constitutional under a due-process analysis (*id.* ¶ 98) as well as under the federal cruel and unusual punishment clause (U.S. Const., amend. VIII) and the Illinois proportionate penalties clause (Ill. Const. 1970, art. I, § 11) (*id.* ¶¶ 106, 110). Because our supreme court upheld the constitutionality of the juvenile transfer statute, defendant's first argument is foreclosed.

¶ 106 Next, defendant argues that the 80-year aggregate sentence was improper because the trial court insufficiently considered defendant's youth and his upbringing. Generally, the trial court's sentencing determination is accorded great deference because it is in the best position to determine an appropriate sentence due to its opportunity to observe and weigh the witnesses' credibility and demeanor, as well as the defendant's credibility, demeanor, general moral character, mental abilities, social environment, habits, and age. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The reviewing court considers a trial court's sentencing decision under an abuse-of-discretion standard of review, and, because of the deference accorded that decision, the

reviewing court must not substitute its judgment for the trial court's simply because it might have weighed the appropriate sentencing factors differently. *Id.* However, even if the sentence is within statutory limits, it may be found to be an abuse of discretion where "the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Id.* at 210; see also *People v. Margentina*, 261 Ill. App. 3d 247, 249-50 (1994) (even if a sentence is within the statutory sentencing range, an abuse of discretion may be found if the sentence diverges from the purpose and spirit of the law and particularly where the defendant is young and possesses rehabilitative potential).

¶ 107 In three landmark cases, the Supreme Court set categorical limitations on the sentences of juvenile offenders. *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455 (2012) (prohibiting the sentence of life without the possibility of parole for all juvenile offenders); *Graham v. Florida*, 560 U.S. 48 (2010) (prohibiting the sentence of life without the possibility of parole for juvenile offenders convicted of crimes other than homicide); *Roper v. Simmons*, 543 U.S. 551 (2005) (prohibiting capital punishment for juvenile offenders). The cases relied on the proposition that children are different from adults for sentencing purposes. *Miller*, ___ U.S. at ___, 132 S. Ct. at 2464; *Graham*, 560 U.S. at 68; *Roper*, 543 U.S. at 569. Children lack maturity and are less responsible than adults, leading to reckless and impulsive behavior and heedless risk taking. *Miller*, ___ U.S. at ___, 132 S. Ct. at 2464; *Graham*, 560 U.S. at 68; *Roper*, 543 U.S. at 569. Children are more vulnerable than adults to negative influences and outside pressure from family and peers, they have a limited amount of control over their own environment, and they lack the ability to extricate themselves from crime-producing settings. *Miller*, ___ U.S. at ___, 132 S. Ct. at 2464; *Graham*, 560 U.S. at 68; *Roper*, 543 U.S. at 569. Finally, a child's character is not as well formed as an adult's, a child's personality traits are less fixed and more malleable, and the

child's actions are less likely to be indicative of irretrievable depravity. *Miller*, ___ U.S. at ___, 132 S. Ct. at 2464; *Graham*, 560 U.S. at 68; *Roper*, 543 U.S. at 570. These characteristics of a child serve to lessen the child's moral culpability, consequently diminishing the penological justifications for imposing the harshest sentences. *Miller*, ___ U.S. at___, 132 S. Ct. at 2464-65; *Graham*, 560 U.S. at 68, 71-73; *Roper*, 543 U.S. at 570-71.

¶ 108 Obviously, the categorical limitations on sentencing promulgated by *Miller*, *Graham*, and *Roper* are not at issue in this case. Thus, those cases do not serve as controlling authority. However, their discussions of juvenile offenders and the ways in which their personal culpability may be lessened are important and persuasive. In short, they teach that youth should be carefully and significantly considered when imposing sentence because a juvenile offender is simply not a miniature adult; rather, he or she is not as morally culpable as an adult offender for the same crime, no matter how heinous. Further, the child is more likely to change, offering greater rehabilitative potential. Thus, in our view, *Miller*, *Graham*, and *Roper* all stand for the proposition, which has been reflected in cases like *Stacey* and *Margentina*, that significant weight should be accorded an offender's youth and rehabilitative potential, so much so, that where a sentence is within the proper statutory range it may nevertheless constitute an abuse of discretion if the trial court failed to sufficiently consider the offender's youth and rehabilitative potential.

¶ 109 Here, the trial court noted that defendant was 15 at the time of the offense and was 17 at the time of sentencing. The trial court acknowledged defendant's upbringing but, by imposing a nearly maximum sentence, appeared to inadequately consider that upbringing and its effect on defendant in light of *Miller*, *Graham*, and *Roper*. For example, we note that defendant's father was incarcerated for most of defendant's life; his mother was in and out of incarceration and

abused drugs throughout defendant's life. Defendant was required to be the parental figure for his younger siblings. In addition, defendant was diagnosed at an early age with bipolar disorder. He was treated with medication for the condition until his mother, unhappy with the effects of the medication, discontinued it. It appears that, once his mother stopped the medication, defendant remained untreated. Additionally, despite awareness of the condition, defendant did not receive treatment for bipolar disorder while incarcerated and awaiting trial, during trial, or after trial and awaiting sentencing. Having reviewed the record, we believe that defendant's home life and upbringing were extremely troubling and detrimental to defendant's chances in life.

¶ 110 The trial court focused on defendant's choices on the day of the offense, his bad conduct while incarcerated, the failures of the juvenile justice system, and the extremely and endemically violent environment in which defendant was living, all of which are appropriate factors to consider. We do believe, however, especially in light of Miller, *Graham*, and *Roper*, that the court gave unduly short shrift to significant evidence illustrating defendant's youth and rehabilitative potential. We note that extensive evidence was presented to show that, while attending schooling while incarcerated and awaiting trial, defendant did well, apparently when he wanted to and when he was engaged in the subject. Moreover, the corrections officers who dealt with defendant all reported that they felt they were able to get along well with defendant, despite defendant's misconduct. While defendant did, at times, lash out at correctional officers, most of defendant's misconduct was not directed at the officers themselves, but at his situation. Additionally, we note that defendant's criminal history was limited to offenses which would be

considered misdemeanors.[3] Likewise, his misconduct while incarcerated, although extensive and involving major rule infractions, does not appear to have resulted in criminal charges.

¶ 111 Last, we note that the trial court imposed a 55-year sentence for the murder of Spider, or just 5 years less than the maximum (see 730 ILCS 5/5-8-1(a)(1)(a) (West 208) (sentence for first degree murder is between 20 and 60 years)). We do not believe that this sentence is warranted in light of our discussion above.

¶ 112 We have carefully reviewed the record as a whole as well as the trial court's sentencing decision. The trial court deliberately and seriously considered the evidence in aggravation and mitigation, as well as the arguments put forth by counsel. Notwithstanding the trial court's proper deliberations, we conclude that, in imposing a nearly maximum sentence for the murder conviction, the trial court failed to adequately consider defendant's youth and rehabilitative potential and the impact of defendant's upbringing, especially when *Miller*, *Graham*, and *Roper* are considered. Accordingly, we must hold that defendant's sentence was excessive as imposed.

¶ 113 Defendant does not challenge more than his sentence for murder, and defendant does not ask that he be resentenced. Rather, defendant asks this court to reduce his sentence. Under Illinois Supreme Court Rule 615(b)(4) (eff. Jan. 1, 1967), we are empowered to reduce a sentence when we have found it to be erroneous. Accordingly, we reduce defendant's sentence

[3]We note one incident stood out to the court. Defendant apparently was holding a gun for Jadale Lamon when they confronted another juvenile. Once Lamon ascertained the victim's identity, he demanded the gun from defendant. The victim ran, but Lamon shot him and wounded him in the leg. Defendant was neither charged for this incident nor convicted of any offense relating to it.

on the murder conviction to 43 years, all other terms to remain in effect. This reduction strikes an appropriate balance between defendant's youth and rehabilitative potential, while recognizing the severity of the offense and troubling aspects of defendant's conduct while incarcerated, and accounting for conditions outside of defendant's control, like the failings of the juvenile court system and the violent environment in which defendant resided. Thus, defendant's aggregate sentence is reduced to a total of 68 years.

¶ 114 III. CONCLUSION

¶ 115 For the foregoing reasons, we reject defendant's contentions regarding impeachment and ineffective assistance of counsel, and thereby we affirm defendant's conviction of murder. We agree with defendant's excessive sentencing contention and reduce defendant's sentence.

¶ 116 Affirmed as modified.