2016 IL App (2d) 140407-U
No. 2-14-0407
Order filed June 2, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JOSE M. GARCIA, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 13-CF-654 Honorable Daniel B. Shanes, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied defendant's motion to suppress his confession. The evidence was sufficient to sustain the jury's finding that defendant personally discharged a firearm that proximately caused death. Affirmed.

¶ 2 In the direct appeal of his first-degree murder conviction (720 ILCS 5/9-1(a)(1) (West 2012)), defendant, Jose M. Garcia, raises two issues. The first is whether the trial court should have granted his motion to quash and suppress his confession, where police obtained it by using allegedly coercive techniques. The second issue is whether defendant's sentence should be

reduced because the State failed to prove beyond a reasonable doubt that he personally discharged the firearm that resulted in the victim's death. We reject these arguments and affirm.

¶ 3 I. BACKGROUND

¶ 4 At around 12:30 a.m, on March 10, 2013, Gabriel Gonzalez was shot and killed outside of a liquor store. Defendant was ultimately charged with three alternative counts of first-degree murder.

¶ 5 A. Motion to Suppress

¶ 6 Defendant filed a pre-trial motion to suppress his custodial statements, arguing that his confession was involuntary because it was given in response to coercive interrogation techniques. Specifically, defendant argued that he was confronted by interrogating officers with both general and specific threats of direct harm to his family if he continued to refuse to confess to the allegations.

¶ 7 Hearings on defendant's motion commenced in October 2013. There, the evidence reflected that defendant was 18 years old at the time of his interrogation. The interrogation took place at the Round Lake Beach Police Department and was conducted by Jeremy Gaughan, a Gurnee police officer who was investigating the shooting as part of the Lake County Major Crimes Task Force, and Jason Seeley, a Mundelein police detective. The interrogation room was approximately eight feet wide and long, with no windows and one door. The two interrogating detectives wore jeans and were unarmed. Defendant was not handcuffed on his transport to the station or during the interrogation. There is no dispute that he received valid *Miranda* warnings.

¶ 8 Defendant was first interrogated for around one hour, beginning at 8:51 p.m. on March 10, 2013. The interrogation resumed on March 11, 2013, at around 2 p.m. and again lasted

around one hour. Both interrogations were video and audio recorded and were played in court. Gaughan viewed the recordings and transcripts thereof and verified their accuracy.

¶ 9 In the first interrogation, defendant was questioned about his involvement with the Mundelein Latin Kings street gang. He was further questioned about his whereabouts and activities the day prior and into the morning of March 10, 2013. Defendant claimed that he was with his brother in Waukegan, and he denied any involvement in the shooting death of Gonzalez. The detectives told defendant that they knew he was not being truthful because they had video footage from the liquor store. Defendant asked if he could see the video, and they told him yes (but did not yet show it to him). Gaughan agreed that, about ½ hour into the initial interrogation, he raised his voice once (loudly) because defendant was "very cocky [and] carefree" and Gaughan wanted to impress upon him the seriousness of the situation.

¶ 10 Prior to the second interrogation, Seeley and Gaughan discussed what tactics they would use to try to obtain defendant's confession. They discussed: (1) shifting the blame onto the victim; (2) reminding defendant of a well-known incident of retaliation against a gang member's family ("talking about the reality of gang violence and that[,] specifically[,] in Mundelein where they had the firebomb and the Latin Kings and the house that killed the kid.[1] Knowing that the defendant was so close to Latin Kings, we felt he would be able to relate to that and how that is a reality"); and (3) showing defendant the video of him walking into the liquor store. According to Gaughan, shifting the blame to the victim did not help, but he testified that defendant's demeanor

[1] The referenced event took place in May 2009. According to Seeley, the home belonged to a Mundelein Latin King gang member who wanted to leave the gang. The firebomb was set by two fellow gang members as retaliation for the member's desire to leave. The target of the attack was not home; rather, a small child died and two other people were seriously injured.

after viewing the video was completely different. Gaughan also explained that they knew that Jose Rebollar-Vergara,[2] defendant's 26-year-old co-defendant (tried separately), was affiliated with a particularly violent branch of the Latin Kings from Chicago. They did not, however, know whether the victim or his cousins were affiliated with rival gangs. Gaughan testified that the subject of possible gang retaliation against defendant's family was used to generally remind defendant of "what he already knew, which is the reality of gang life in any part of this country or state, that just like with the firebombing in Mundelein, that gang violence carries over."

¶ 11 Before relating the contents of Seeley's testimony at the hearing, we recount relevant portions of the second interrogation. For context, we note that the detectives impressed upon defendant that they had already interviewed witnesses and had the videotape, so they needed his version of the events because all fingers were pointing at him. They suggested that maybe the victim started the altercation or maybe defendant thought the victim had a weapon. They wondered whether defendant went there with the intention of committing a murder or whether it just accidentally happened. Without defendant's version of the story, they explained, all of the responsibility would fall on him.

¶ 12 Further, the detectives reviewed with defendant his relationship with his family members, including two older brothers who served in the United States Marine Corps. Defendant explained that he hoped to follow in their footsteps. Seeley told defendant that he was dishonoring his brothers by lying about where he was and falsely bringing his family into his alibi. Seeley reiterated that defendant's brothers had nothing to do with this situation and that defendant needed to take responsibility for his actions, not bring his family down. Seeley said

[2] Going forward, we will refer to the co-defendant as simply Vergara.

that defendant's parents were good people and would not lie for him, and he reminded defendant that his family loved him and they, too, were affected by this situation:

> "And you know that if you don't say anything and you don't tell us what happened, that this isn't the end of this story. You know that right? You've been through this. You know what is going to happen. You know the retaliation that's going to come to your family. And none of your Latin King friends, associates, whatever you want to call them, they're not going to protect your family. *** But if you don't give your version of this then people are going to go on the assumption of what they [ ] think and what they feel happened."

¶ 13 Defendant asked, "I'm not going home, right? Any time soon?" Seeley replied that, "honestly," defendant was probably never going back home. Further, the "word on the street" was that defendant thought that Gonzalez was a member of a rival gang, but he was not, and "the Kings are pissed because they didn't authorize this. They didn't give you permission to fucking shot [*sic*] anybody and kill them under their claim that this was a Latin King hit." As Gonzalez was not, in fact, a member of a rival gang:

> "SEELEY: They're at war. The Kings are going to be at war because of something you did, a personal vendetta. For whatever reason, you didn't like this kid or because he talked shit to you guys in the liquor store. But it's coming out. Other people are talking. Because you know how rumors start. Rumors are already starting that this was a Latin King hit on this kid and you weren't given permission to do that. So, how is that going to look for you? You think you're going to get any help? You think you're going [to] get any protection when you go in [Department of Corrections]? Fucking Latin Kings are pissed at you dude. No, you, you sit there and laugh. You think.

DEFENDANT: Naw, it's not that. It's just –

SEELEY: Think. Think. No, think about it. Laugh. Laugh.

DEFENDANT: You're right about the rumors.

SEELEY: That right. Rumors are bad, rumors get fucked up. Right? So what if this comes back at your family? What if the Latin Kings get that pissed off that they say, 'you know what, [defendant] did this out of spite. He made a, fuck him. We're going to go get his parents. We're going to go after his sister. We're going to go after his brothers. Because he, he fucked us over.'"

¶ 14 Gaughan interjected that Gonzalez had brothers who were also angry and something could happen to defendant's family. Seeley advised defendant to consider that he could not protect people once he was in the DOC, and, in response to defendant's question whether he would be returning to "St. Charles" (presumably, juvenile detention), the detectives said no, defendant would be going to "big boy prison."

"SEELEY: You're going to big boy prison. And *** no one's going to have your back in there. But the only thing you can do right now [is] by telling us what happened and why this happened. Clear up the rumors that are going to get, be spread. Do this at least for your family. Do it for your parents. Do it for your sister. Do it for your brothers. Do it for your cousins, you[r] nieces, your nephews, anybody in your family. You need to clear this up and you need to take responsibility that you did this and this is on you. This wasn't Latin Kings. This was nothing because if you start a war that you're not even involved in you know it's going to get bad. And it may not be today. It may not be tomorrow. It may not be next week. But it will come back. And it's going to be your responsibility. You know how it works. Right?

DEFENDANT: Yeah."

¶ 15 Gaughan told defendant that this was his opportunity to give his version of the events. They explained that they wanted to prevent a situation where the next shooting they investigated involved his family members as victims.

"SEELEY: Because we can, you can prevent that right now. We don't have side, we don't take sides in this. So, whatever you tell us that, that, that goes out in the media. Will put that out in the paper. We'll say this, you know, [defendant] said this was between him and this kid. This wasn't a gang-related crime. We can put that everywhere. We can get your word out so people know, hey this, you know what he's not putting [t]his on the Latin Kings. This wasn't a Latin King ordered hit. Because that's what, that's what you need to get out there. Cause if it doesn't, I can't, we can't control the rumors that go on the street. And we can't, once we walk out of here, we can't control what happens unless you give us something to, to put out there."

¶ 16 The interrogation continued with the detectives saying "nobody" wants any part of this, and both the Latin Kings and Gonzalez's family, who could have ties with "MLD" or "Surenos" were also "pissed." They asked whether defendant thought that the gun was unloaded or just meant to scare Gonzalez, "You got to give us something."

"GAUGHAN: I mean you got your two brothers, two proud Marines. Looking down at their younger brother that can't even stand up and be a man for himself. And admit when he did something wrong or that he made a mistake. They're going to take a lot of pride in that."

¶ 17 They explained that, based on the video, the shooting appeared premeditated because defendant was wearing gloves in the store and when he pulled out the gun. While in the store,

defendant followed Gonzalez outside and kept talking to him. Gonzalez kept backing away and then, while he was running away, shots were fired. "You want this to go down without your side being heard? You already see we have the video and the pictures." Defendant stated, "I want to see the video." The investigators proceeded to show defendant the video.

¶ 18 After watching the video, the investigators asked defendant whether he would try to deny that he was depicted therein, in the clothes they had already recovered from his house and Silvia Saavedra's house, where defendant apparently fled to after the shooting.

"SEELEY: We're not sitting in here lying to you. And when I tell you, when I tell you about your family being in danger, we worked the fire bombing case in Mundelein.

DEFENDANT: Y'all worked that?

***

DEFENDANT: That was some fucked up ass shit.

SEELEY: That was fucked up[,] wasn't it?

DEFENDANT: Yeh. That was fucked up.

SEELEY: That was retaliation.

DEFENDANT: That was some fucked up ass shit.

***

SEELEY: That was what? That was a revenge because somebody fucked up.

DEFENDANT: Something that shouldn't have [***]

SEELEY: Shouldn't have happened. Right. Do we want that next fire bomb to be your parents' apartment or your brother[']s] house?

DEFENDANT: That shit shouldn't never [have] happened. It was a mistake.

SEELEY: You, you saw in that how the person they're [*sic*] were targeting wasn't even there.

DEFENDANT: I know.

SEELEY: Who suffered?

DEFENDANT: The little brother died.

SEELEY: Yep. That's what we're trying to prevent here. Okay? You, you can't make this go away. There ain't no way you can make this go away right now. What happened is what happened. But what you can do, you can try and make this right so that you don't hurt your family any worse. You don't make it any worse for them."

¶ 19 They asked defendant again to "explain the mistake." They reminded him that everyone makes mistakes, but no one else had to suffer. Defendant's family did not have to suffer, but his niece and little sister would grow up and go to school with people who will know what happened and will have known Gonzalez and his family and "[S]omething's going to happen one day." Gaughan asked defendant not to let one accident put his parents at risk, because his "parents never asked [defendant] to go there and do that. They don't need to be involved in this. You're going to let some fucked up thing that happened in Mundelein, happen to them? And you know that shit's real. It happens."

¶ 20 This theme continued. The investigators further reminded defendant that he needed to think long term and that, while he had made his bed and had to deal with that going forward, his family should not have to look over their shoulders every day because they are worried someone will come after them. "Your mom's going to be walking out to her car at work and someone's going to come up and jack her or do something worse to her. I mean, you know the, listen, you know how bad it can get." Further, they reiterated that they were not talking about the

Mundelein Latin Kings, who are "a bunch of little shorties who run around claiming that they're going to be hard asses." Rather, they were talking about Chicago Latin Kings who would take this situation seriously because "you've put their interests in jeopardy because of something you did. And now rumors are getting started that this was a Latin King ordered, and this wasn't a Latin King order."

"GAUGHAN: And it's flying around Facebook.

SEELEY: It's Face, yeh, it's . . . I'll give you one better. The Chief of Mundelein called today up to the Task Force to ask us if he needed to start assigning extra officers to start watching down by your apartment where your parents live cause they're worried about retaliation. You think I'm fucking kidding –

DEFENDANT: Who said that? The Chief of Mundelein?

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SEELEY: He called up here asking if Mundelein was going to have to do extra patrol down at your apartment cause we're going to have to worry about retaliation. And you know what we told him? Fuck yeh you better put some extra officers down there.

GAUGHAN: People are calling into Crime Stoppers saying shit's going to go down. Everyone's looking for some money.

SEELEY: But we can only protect so much. But if you want to tell us your version of this, this was an accident and this was on you and this was nothing else. I, we'll, I will be more than happy to put that out there. And we'll make sure we get it to the officers, who can get it out on the street. Officers that have credibility with guys. *** You'll know that you don't have to worry about anything and your family cause you took responsibility for it."

¶ 21 Defendant agreed that he did not want anything to happen to his family on account of a mistake and that he is close with his family members. The investigators reminded defendant that the newspapers would be printing the story that day, with a one-sided version of events, painting the victim as a "saint" and that defendant's family would have to deal with the fallout. They told defendant that, although he was correct that, either way, he would be "going to County," the difference he could make was to make it better for his family members so that they would not need to worry every day that something bad might happen to them. Defendant would not have to close his eyes every night, wondering if his family was safe. They appealed to him to consider what he would like his mother to think about him, as well as his brothers, who were in the military doing the right thing, but then the youngest brother, defendant, "couldn't stand up and be a man at all. He couldn't do what was right. He only cared about himself. Didn't care about the rest of the family." They noted that everyone makes mistakes, but it is about owning up to it and doing the right thing. Defendant then asked whether he could say goodbye to his parents, if he told the investigators where he was that night, and they said that it would not be a problem for them to try to arrange that. Then:

> "DEFENDANT: Man. Man. Fuck it man. You know what? I'mma tell you what happened. I'm tired of this shit. Fucking yeh. I was with locust [sp]. Yes, I was saint [sp]. Yeh, I went to the liquor store. Yeh that was me, man. But I didn't mean to kill dude. I never thought he was shot. I never thought he died yesterday. Someone, I heard by someone that the rumor spread out that he died. I didn't know he dead. I didn't even know, I had heard supposedly that bullet hit him in the head. Some shit. I don't even know. And –
>
> GAUGHAN: Did you just pull out the gun to scare him? Is that it?

DEFENDANT: Yeh. I pulled it out and, um, I just pulled it out and, um, and then I just like I didn't aim it towards him but I'm like, I just aimed it at, like that.

GAUGHAN: Like at the ground?

DEFENDANT: Yeh. And I just shot him. I just shot it. And I just kept, kept doing it but I didn't know I was actually hitting him where I could kill him.

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DEFENDANT: It was a fucking accident and I never meant to kill dude."

¶ 22 Thereafter, the investigators tried to convince defendant to tell them where the gun was located. He persistently resisted describing exactly how he "destroyed" the gun and, although he ultimately agreed to show the investigators where he disposed of it,[3] he first refused several times to provide that information. In addition, the investigators tried to convince defendant to identify a third person who was with him that night. He refused. He further stated that his co-defendant should not be charged and all responsibility should rest with him. Finally, the investigators told defendant that they needed him to write out his statement. He refused. Defendant told the officers that the camera would be all the evidence they needed, and when they asked him how he knew that the audio was turned on, he replied, "Just a wild guess. Wild guess. I ain't writing nothing, nothing out."

¶ 23 Returning to the suppression hearing, Seeley testified that his reference during the interrogation to rumors spreading referred to the *possibility* that rumors may have been spread, as opposed to any known rumors. Further, he testified that he raised the Mundelein firebombing case with defendant to impress upon him that his actions had an effect on other people, but

[3] Defendant testified at trial that he later intentionally directed officers to the wrong location so that the weapon would not be recovered.

Seeley did not know, at that point, if there had been any threats to defendant's family. "It was my intent again to bring to his attention that these things happen when you are involved with gangs and that there is retaliation and that acts like this happen. That is what I was trying to stress to him." Seeley verified that, in fact, the Chief of Mundelein did directly call Seeley to ask whether he needed to put extra officers around defendant's family's apartment due to possible retaliation. Seeley said, "Chief, what we have at this point, this is possibly a gang-related shooting so do what you feel you need to do. I said probably not a bad idea." Seeley testified that he never tried to correct the impression that there was a concern of danger to defendant's family; "I didn't try to correct it. I was putting it out there." Seeley stated that his interrogation "theme" was to address the fact that, based on the environment in which defendant grew up, "which is gangs, Department of Corrections," defendant understood the repercussions of his actions. At the time of the interview, Seeley did not believe that there were any "Crime Stoppers threats," nor did he have knowledge of any gang threats of retaliation. Seeley testified that his intention was to get defendant to tell the truth. Prior to the second interrogation, Seeley contacted another Mundelein police officer who had numerous contacts with defendant and asked him for advice on ways Seeley might get defendant to start talking. That officer said several things would *not* work, but that he knew defendant had very strong ties to his family and the Latin Kings and that those facts might help Seeley get some "communication" from defendant.

¶ 24 The court also heard evidence from another officer that he was not aware of any specific threats that caused an increase in patrols around defendant's home or any threats on Facebook; however, his department discussed the need for extra patrols in general due to possible retaliation. Further, the court heard that defendant had been interrogated before: (1) in May

2008, when he was 13 years old, for a graffiti incident; being *Mirandized*, defendant admitted his involvement and implicated others; (2) in September 2008, still 13 years old, for vandalism; being *Mirandized*, defendant refused to answer questions; (3) in February 2009, when he was 14 years old, for an incident in the school cafeteria; being *Mirandized*, defendant refused to answer questions; and (4) in April 2011, when he was 16 years old, for a Class A misdemeanor (parole violation); being *Mirandized*, defendant agreed to talk and made an admission.

¶ 25 On January 9, 2014, the trial judge denied defendant's motion to suppress, finding his statements were voluntary. The court found, based on the totality of circumstances, that defendant intelligently chose which questions he wanted to answer and what he wanted to say. The court noted that the interview was relatively short and that there were no allegations or evidence of any physical abuse. The court further found that defendant was 18 years old, his intelligence and mental capacity did not seem to be impaired, and he had significant background and experience with law enforcement over about five years, including with *Miranda*, his rights, and the making of statements. "Indeed, in some of those times the defendant chose to make a statement and importantly some of those times the defendant invokes his rights and chooses [*sic*] not to make a statement convincing [*sic*] his understanding and ability to exercise his rights." Finally, the court found:

> "Regarding threats or promises by the police to the defendant, the defendant claims that his will was overborne specifically because the police threatened his family unless he defendant would make a statement that the shooting was not gang related. But a careful examination of the evidence shows that is not what happened, the police did not threaten the defendant's family, what they said was that the defendant's family might be at risk if a rival gang thought that the shooting was gang motivated. And that is at least

colorably true, it is certainly not deceptive and besides some police deception can be permissible."

¶ 26 The court again reiterated that there were no threats, so much as the presentation of colorably-true information that, based on their experience, defendant's family could be at risk for being targets of gang retaliation. They "simply albeit forcefully explained possible consequences of the situation."

¶ 27 The court concluded that the evidence did not show that defendant's will was overborne; "quite the opposite." The court found that defendant was in command of his faculties throughout the entire interaction, decided when and what he wanted to say, including stating that he wanted to see the surveillance video (which, the court noted, the police were under no obligation to do but nevertheless did, further reflecting a non-coercive environment), and, even after making his incriminating statement, defendant refused to answer certain follow-up questions. The court denied the motion to suppress.

¶ 28 B. Trial Evidence Regarding Identity of Shooter

¶ 29 At trial, the video of the shooting depicts defendant in the liquor store, wearing a green shirt, a black hooded sweatshirt with a red stripe across the chest, and a black glove. Defendant kept his left hand in his pocket throughout the entire video. It appears that, as Gonzalez is paying, Vergara said something to him. Gonzalez heads for the door, but defendant follows him and begins talking. Gonzalez backs out of the store, followed by defendant. Vergara and a third companion then proceed after defendant. The parking lot video shows Gonzalez walking backwards away from defendant, with Vergara following and the third companion staying back on the sidewalk. As they approach a truck parked in the distance, the images get less clear, but Gonzalez can then be seen changing direction and moving further away from defendant, who is

closer to the truck, and Vergara, who is closest to the camera and the store. Gonzalez runs, shots are presumably fired, and defendant, Vergara, and their companion run away. The videos were shown to the jury.

¶ 30 Eyewitnesses at the store identified both defendant and Vergara. Witness Dakota Beeter testified that he knew Vergara from a prior encounter as someone who had "jumped" him a few years earlier. He went to the back of the store to avoid Vergara. When Vergara and two other men exited the store, Beeter looked out the front window and saw them exchanging words with a customer who was walking backwards toward a truck. Beeter heard around six shots and looked outside again. He saw a man in a black and red hoodie with a gun in his hand and saw a "flash" come out of the gun. However, Beeter remained inside the store, and the lighting conditions and distance made it such that the shooting took place in a dark area. According to Beeter, the gunman stood by the truck, with the man in gray next to him and a third man by the store's front door. Gonzalez was running away to a nearby apartment building when he was shot in the back and killed. Beeter admitted that he was afraid of Vergara and his "people," who he described as being "everywhere." Beeter further admitted that he did not see the gunman "literally shoot the guy."

¶ 31 Forensic testing done on defendant's sweatshirt revealed gunshot residue on the right and left cuffs, indicating contact with a "primer gunshot residue" or being "in the environment of a discharged firearm." The environment meant that the sweatshirt was 3-to-4 feet either to the side or back of the firearm at the time of discharge or 10 feet to the front. A black knit glove (found at Saavedra's home on March 10, 2013, at 5:30 p.m.) also tested positive for the presence of gunshot residue. In contrast, residue was *not* found on the sweatshirt recovered from Vergara,

which meant that particles were not deposited, were removed by activity, or were not detected by the testing procedure.

¶ 32 Defendant testified and admitted that he was a Latin King member, along with Vergara, and that he wore a green shirt and a black and red hooded sweatshirt on the night of the murder. Defendant explained that he wore gloves because it was cold outside, and he denied that he had a gun or knew anyone else had a gun. Defendant testified that, although he was present during the shooting, he was not the shooter. Rather, defendant claimed that he followed Gonzalez to see if he was in a rival gang, and he testified that Vergara told Gonzalez to "drop the rag," meaning fix his hat, which was worn to the right. He agreed that, on the video, he was next to the truck and Vergara was to his left (nearer to the camera). Vergara then reached under his sweater, pulled out a gun, and started shooting. "It caught me unexpected," and "[n]o, absolutely I did not shoot Mr. Gonzale[z]." According to defendant, back at Saavedra's house, Vergara washed his hands and the cuffs of his gray sweatshirt with dish soap. Defendant explained that the residue found on his own clothes resulted from his attempts to wipe down the gun for fingerprints after Vergara handed it to him. Defendant used his glove first, then the sleeve of his sweatshirt, and then he took off the sweatshirt and used his t-shirt to wipe down the gun because he thought he "could get more – wipe it down better." The forensic expert testified that gunshot residue can be deposited on fabric by wiping a firearm with the fabric.

¶ 33 However, defendant's videotaped interrogation and accompanying transcripts, wherein he admits to being the shooter and says that Vergara should not be held responsible for the shooting, were presented to the jury. Defendant testified that, based upon what the interrogating officers told him, he believed his family was in danger and that his admissions were lies. He admitted that, during his interrogation, he lied more than 37 times to the police, but he further stated that

his trial testimony was the truth. The interrogating officers also testified about the interrogation. Further, the officer that recovered Vergara's gray sweatshirt the evening of March 10, 2013, testified that it did not appear to be damp. The evidence technician who received it that night also testified it did not appear to be wet or freshly laundered. Finally, the forensic expert who performed the residue testing testified that she did not know if washing a garment's cuffs with soap and water would remove gunshot residue; "[c]ertainly if it was put into a washing machine or received a whole cycle, yes. I'm not sure."

¶ 34 The jury found defendant guilty and further found that he personally discharged the firearm that caused Gonzalez's death. Defendant's posttrial motion was denied. The court sentenced defendant to 62 years' imprisonment (37 years for first-degree murder and 25 years for the firearm enhancement). Defendant appeals.

¶ 35 II. ANALYSIS

¶ 36 A. Motion to Suppress

¶ 37 Defendant argues first that the trial court erred in denying his motion to suppress his confession. Specifically, defendant argues that Seeley and Gaughan repeatedly lied to him that his family was at great risk of physical harm from a street gang and that the only way to eliminate that risk and ensure his family's safety was to admit his responsibility for the shooting. Defendant contends that the detectives, after discussing tactics to get him to confess, took advantage of his close relationship with his family, which ultimately prevailed and resulted in admissions. He contends that those admissions were involuntary and should have been suppressed because his will was overborne by the coercive interrogation technique of using "outright lies" and appealing to his sense of family. For the following reasons, we conclude that the trial court properly found that the State met its burden of proving voluntariness by a

preponderance of the evidence (*People v. Slater*, 228 Ill. 2d 137, 149 (2008)), and that the court did not err in denying defendant's motion to suppress his confession.

¶ 38 We consider the admissibility of defendant's incriminating statements using a bifurcated standard of review. Under bifurcated review, the reviewing court should "accord great deference to the trial court's factual findings, and *** reverse those findings only if they are against the manifest weight of the evidence," but should "review *de novo* the ultimate question of whether the confession was voluntary." *In re G.O.*, 191 Ill. 2d 37, 50 (2000). The fourteenth amendment's due process clause guarantees that no state may deprive an individual of liberty without due process of law. U.S. Const., amend. XIV, § 1. Further, the fifth amendment (which applies to the states through the fourteenth amendment) provides that no person shall be compelled in a criminal case to act as a witness against himself or herself. U.S. Const., amend. V. Certain interrogation techniques may violate due process and the fifth amendment by rendering a confession involuntary and, accordingly, inadmissible. See *Dickerson v. United States*, 530 U.S. 428, 434 (2000); *Miller v. Fenton*, 474 U.S. 104, 109-10 (1985). To determine whether a statement was given voluntarily, we consider whether it was made "without compulsion or inducement of any sort" (*People v. Gilliam*, 172 Ill. 2d 484, 500 (1996)), or whether the defendant's will was overborne by the circumstances surrounding the confession (*Dickerson*, 530 U.S. at 434). This requires consideration of the totality of the circumstances (*Dickerson*, 530 U.S. at 434), including, for example:

> "the age, education and intelligence of the accused; the length of the detention and the duration of the questioning; previous experience with the criminal justice system; falsely aroused sympathy; offers of leniency or other promises to induce a confession; whether the accused was advised of his constitutional rights; and whether the accused

was subjected to any physical mistreatment." *People v. Ball*, 322 Ill. App. 3d 521, 531-32 (2001).

¶ 39 Here, defendant focuses on the use of lies about risk of physical harm to his family if he did not confess. He points to comments that were made to him that the Latin Kings were "pissed" at him and that the "only thing [he] could do" was to "tell[ ] us what happened and why this happened. Clear up the rumors that are going to get, be spread. Do this at least for your family." Defendant notes the police said they wanted to avoid a situation where the next victim was one of his family members and, then, after referencing the Mundelein firebombing, asked defendant whether he wanted the next firebomb to be at his family's house. The police repeatedly impressed upon defendant that, if he would take responsibility and tell his "version" of the events, his family would not have to suffer and did not have to look over their shoulders in the future. Further, defendant points to the officers' comments that rumors were getting started that the murder was Latin King ordered, that it was "flying around Facebook," and that the police chief wanted to know whether he should assign extra officers to his family's apartment due to retaliation concerns. These were admittedly lies, defendant contends, as the officers had no knowledge of any rumors, on Facebook or otherwise, of gang retaliation or specific threats against defendant's family that required an increase in patrols around his home.

¶ 40 It is true that lies external to the crime itself have been found, in some cases, to be inherently coercive. For example, caselaw treats differently trickery or lies that relate to a suspect's connection to the crime (such as inflating the strength of the evidence against a witness (*e.g.*, *People v. Minniti*, 373 Ill. App. 3d 55, 69 (2007)) or withholding information about the investigation (*e.g.*, *People v. Brown*, 301 Ill. App. 3d 995, 1002 (1998)), which can be permissible, from trickery that is extrinsic to the crime itself, which can be impermissible. For

example, in *Holland v. McGinnis*, 963 F.3d 1044, 1051-52 (7th Cir. 1992), the court distinguished between police trickery that relates to a suspect's connection to a crime, "the least likely to render a confession involuntary," and deceptive practices that introduce extrinsic considerations that distort a suspect's rational, free choice. The court in *Holland* determined that the tactics used in the case before it fell in the former category and that the confession was voluntary, but cited other cases where tactics introducing extrinsic considerations rendered the confessions involuntary. *Id.* (citing, *e.g.*, *Lynumn v. Illinois*, 372 U.S. 528, 534 (1963) (police falsely told suspect she was in jeopardy of losing custody of her children and her welfare benefits but, if she confessed, they would recommend leniency); *Rogers v. Richmond*, 365 U.S. 534 (1961) (police threatened to take the suspect's wife into custody if he did not confess); and *Spano v. New York*, 360 U.S. 315, 320-24 (1959) (officer, who was a close friend of the defendant's, told the defendant that, if he did not confess, the officer would get in trouble and lose his job, which would be disastrous to the officer, his wife, his children, and his unborn child)).

¶ 41 A case defendant cites, *People v. Bowman*, 335 Ill. App. 3d 1142, 1153 (2002), also concerned tactics introducing extrinsic considerations. Specifically, in *Bowman*, police collaborated with the defendant's jail cellmate to induce his confession by exploiting his intense fear of returning to prison. There, the cellmate told the defendant that, after bonding out, the cellmate would return to jail to help the defendant escape and that, to ensure that the defendant was still there, as opposed to being transferred (to Menard, a place to which he was "terrified of returning"), the defendant should make a statement concerning some murders being investigated. The defendant could then remain in jail while police investigated his statement. The cellmate and the defendant then used information from newspaper articles and police reports to concoct "a

believable story," and the defendant provided an incriminating statement to police. The appellate court later upheld the trial court's suppression of the defendant's confession as the product of an orchestrated scheme and agency relationship that was calculated to overcome the defendant's free will and that resulted in a confession that could not be "deemed to be the product of a rational intellect." *Bowman*, 335 Ill. App. 3d at 1154.

¶ 42 However, another case upon which defendant relies, *People v. Travis*, 2013 IL App (3d) 110170 (2013), is readily distinguishable. First, unlike here, *Travis* concerned a juvenile interrogation, which, to a degree, inherently requires enhanced scrutiny. See *People v. Murdock*, 2012 IL 112362, ¶ 32 (taking of a juvenile confession is a "sensitive concern"); see also *In re Gault*, 387 U.S. 1, 55 (1967) (when obtaining a juvenile confession in the absence of counsel, the "greatest care" should be taken to ensure it was not coerced or suggested and "that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair."); *Haley v. Ohio*, 332 U.S. 596, 599-601 (1948) (reflecting that the propriety of interrogation methods might depend on whether the subject of the interrogation is a juvenile or adult). In *Travis*, the interrogating officer told the 15-year-old suspect that, in juvenile court "[e]verybody gets a clean slate when they turn 17. You're lucky that you're less than 17, okay," but that, to get those "breaks," he had to take responsibility for his actions. The court determined that the officer provided this misinformation to the juvenile in an effort to assure him that that, no matter the charge, he would stay in juvenile court, when, in reality, 15-year-olds charged with murder (the crime being investigated) must, by statute, be tried as an adult. *Travis*, 2013 IL App (3d) 110170, ¶¶ 66-67. The court found that this misleading promise of leniency weighed in favor of finding the confession involuntary. *Id.* ¶ 67. However, the court found other factors also contributed to such a finding, *i.e.*, physical discomfort, duration and nature of the detention, and the absence of a juvenile officer during the

interview. *Id*. ¶¶ 62-64, 72. As such, although the court concluded that the confession was involuntarily given, "most importantly" based on the misleading promises of leniency, it ultimately did so based upon the "unique combination of factors that, in the aggregate" weighed in favor of finding the confession involuntary. *Id.* ¶ 74.

¶ 43 The blatantly incorrect information provided in *Travis* and *Bowman* is not, in our opinion, comparable to the tactics used by Seeley and Gaughan here. Further, as defendant concedes, and as is reflected in the above cases, deception or "police trickery" *alone* is rarely sufficient to invalidate a confession. See, *e.g.*, *People v. Kashney*, 111 Ill. 2d 454, 466-67 (1986) (deliberate misrepresentations by police are one factor to consider in the totality of the circumstances). Rather, deception is but *one* factor the court must consider when determining whether a confession is voluntary. See *People v. Martin*, 102 Ill. 2d 412, 427 (1984). The ultimate question remains whether, considering the totality of the attendant circumstances, the defendant's will was overcome at the time that he or she confessed. *People v. Veal*, 149 Ill. App. 3d 619, 623 (1986).

¶ 44 Here, we first disagree with defendant's statement that the officers "outright lied" about the harm that would come to his family if he did not confess. When the interrogation is viewed in its totality, the officers repeatedly asked defendant to provide them with his side of the story. Theoretically, defendant's version of the events might have involved less than a full confession. Further, the investigators' discussion of the Mundelein firebomb murder, rumors, gang retaliation, and the realities of gang life were not necessarily inaccurate—points defendant *conceded* in the interrogation prior to his confession. Indeed, defendant stated that he understood or agreed that, in these situations, rumors start, and he acknowledged that retaliation happens and that innocent people are affected by it, as was the case in the Mundelein firebombing. Frankly,

we suspect that the investigators' relation of their concern about retaliation and the risk to defendant's family was effective precisely because it was *not* unfounded and because those factors represent *reality* as defendant, a gang member, knows it.

¶ 45 Second, even if there were misrepresentations concerning specific threats of harm to defendant's family, which caused defendant to make a statement, causation does not necessarily equate to coercion. Specifically, certain misrepresentations "may cause a suspect to confess, but causation alone does not constitute coercion; if it did, all confessions following interrogations would be involuntary because 'it can almost always be said that the interrogation caused the confession.' [Citation.] Thus, the issue is not causation, but the degree of *improper coercion*[.]" (Emphasis added.) *Holland*, 963 F.2d at1051. Given the foregoing, and considering the totality of the circumstances, we agree with the trial court that any degree of improper coercion here was, if anything, slight. At the time of his interrogation, defendant was not a minor, nor was he inexperienced with law enforcement. He was not beaten or abused in any way. The interrogation room was only 8 feet long by 8 feet wide with no windows and one door, but the interrogation process was relatively short, only two, one-hour sessions, and there are no allegations that defendant was denied food, drink, rest, bathroom breaks, or medical attention. Defendant notes that his presentence report reflects that he was a special education student since kindergarten with receptive and expressive language deficits. However, the interrogation video (which this court has reviewed) reflects, as the trial court noted, that defendant clearly made choices about when to speak and when to remain silent. Defendant was comfortable voicing multiple demands to see the videos from the crime scene and was savvy enough to do so because it helped him ascertain the strength (or more accurately, lack thereof) of his position. *After* his confession, defendant chose to withhold information about the whereabouts of the weapon and

his third companion on the night of the murder. Defendant also refused, after his confession, to make a written statement, telling the officers that they did not need one because he had a "wild guess" that the audio had recorded his confession, again reflecting a certain shrewdness and that his will and ability to make rational choices was not overborne. In sum, the trial court's finding that the State met its burden of proving voluntariness by a preponderance of the evidence was not contrary to the manifest weight of the evidence, and it properly denied the suppression motion.

¶ 46 B. Sufficiency of the Evidence

¶ 47 Defendant argues next that the evidence was insufficient to establish beyond a reasonable doubt that he personally discharged the firearm that killed Gonzalez. Accordingly, defendant argues that his sentence must be reduced to a 15-year enhancement, as opposed to the 25-year enhancement that the court imposed. We disagree.

¶ 48 Section 5-8-1(d) of the Unified Code of Corrections sets forth firearm enhancements for first-degree murder convictions. 730 ILCS 5/5-8-1(d) (West 2012). If, during the commission of the offense, the defendant personally discharged a firearm that proximately caused death to another person, 25 years must be added to his or her sentence. 730 ILCS 5/5-8-1(d)(iii) (West 2012). However, if the person simply committed the offense while armed with a firearm, 15 years must be imposed. 730 ILCS 5/5-8-1(d)(i) (West 2012). The enhancing factor must be proved beyond a reasonable doubt. *People v. Swift*, 202 Ill. 2d 378, 383 (2002).

¶ 49 When a defendant challenges the sufficiency of the evidence, we consider whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of a crime beyond a reasonable doubt. *People v. Patterson*, 314 Ill. App. 3d 962, 969 (2000). When considering a challenge to a criminal conviction based on the sufficiency of the evidence, it is not the role of the appellate court to

retry the defendant. *People v. Hall*, 194 Ill. 2d 305, 329-30 (2000). Moreover, "it is the job of the fact finder to make determinations about witness credibility and that the fact finder's credibility determinations are entitled to great deference and will be disturbed rarely on appeal." *People v. Cerda*, 2014 IL App (1st) 120484, ¶ 156. This deference is afforded because the fact finder is in a superior position to determine and weigh the credibility of the witnesses, observe witnesses' demeanor and resolve conflicts in their testimony. *Id.* We will not reverse a conviction unless the evidence is so improbable or unsatisfactory as to raise a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

¶ 50 Here, the jury found that the State proved beyond a reasonable doubt that defendant personally discharged the firearm that caused Gonzalez's death. There is no question that there was sufficient evidence to sustain that finding. First, we have upheld the introduction of defendant's confession, wherein he admits to being the shooter. Second, the trial evidence corroborated that confession. See *People v. Willingham*, 89 Ill. 2d 352, 360 (1982) (there must be independent corroboration for the confession). At trial, defendant cast Vergara as the shooter. However, Beeter knew Vergara from a prior encounter as someone who had "jumped" him a few years earlier. Beeter testified that he saw, not Vergara, but the man in the black and red hoodie (*i.e.*, defendant) with a gun in his hand and that he further saw a "flash" come out of the gun. Although defendant tried to lessen Beeter's credibility on this point, based on his distance from the shooter, lighting conditions, and his reasons to fear identifying Vergara as the shooter, it was the jury's province to weigh the evidence and assign credibility to the testimony.

¶ 51 Further, gunshot residue was found on defendant's clothes, but not on Vergara's. Although defendant introduced evidence that residue can be found on clothing for reasons other than shooting the weapon, such as being near a weapon that was fired or wiping clean the

weapon with the clothing, the jury was, again, free to reject those possibilities. Defendant testified that Vergara washed the cuffs of his sleeves with dish soap; however, the forensic expert who performed the residue analysis testified that it was not clear that doing so would be sufficient to remove all gunshot residue, if it existed.

¶ 52 Finally, we note that the video from the liquor store depicts defendant with a glove on his right hand and his left hand in his pocket the entire time he is in the store and into the parking lot. The State suggested that defendant had his hand in his pocket because there was a gun there, and the jury could have found that supported by the evidence it viewed. Defendant is clearly seen as the person who follows Gonzalez on his way out of the store and out into the parking lot. The jury could have viewed this evidence as defendant being the aggressor and, coupled with the other evidence, including his confession to being the shooter, as further evidence establishing beyond a reasonable doubt that he personally discharged the firearm that caused Gonzalez's death. We reject defendant's sufficiency argument.

¶ 53 III. CONCLUSION

¶ 54 For the reasons stated, we affirm the judgment of the circuit court of Lake County. Further, as part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 55 Affirmed.