SIXTH DIVISION
June 15, 2018

No. 1-15-2820

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of
	)	Cook County.
Petitioner-Appellee,	)	
	)	
v.	)	No. 13 CR 7891
	)	
ERIC TAYLOR,	)	
	)	Honorable Vincent M. Gaughan,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Connors concurred in the judgment.

ORDER

¶ 1 ***Held*:** We affirm defendant's conviction and sentence for first degree murder. The evidence was sufficient to sustain the jury's verdict as a reasonable jury could have found the witnesses' testimony credible. It was not plain error to admit DNA evidence by stipulation. Trial counsel did not render ineffective assistance by stipulating to the admission of DNA evidence or by failing to request an accomplice witness jury instruction. The sentence fell within the statutory range and was not excessive in view of defendant's prior record and background. The firearm sentence enhancement statute is not unconstitutional on its face.

¶ 2 Following a jury trial, defendant Eric Taylor was convicted of first degree murder and sentenced to 35 years' imprisonment, with an additional 25-year sentence enhancement because

he used a firearm. On appeal, defendant contends that (1) the State failed to prove his guilt beyond a reasonable doubt; (2) irrelevant DNA evidence was admitted; (3) trial counsel was ineffective; (4) the trial court abused its discretion in sentencing defendant to more than the minimum required sentence; and (5) the firearm enhancement statute is unconstitutionally vague. We affirm.

¶ 3 BACKGROUND

¶ 4 Defendant was charged in a multi-count indictment with several counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2), (a)(3) (West 2012)), armed robbery (720 ILCS 5/18-2(a)(2), (a)(3), (a)(4) (West 2012)), unlawful vehicular invasion (720 ILCS 5/18-6(a) (West 2012)), attempted aggravated vehicle hijacking (720 ILCS 5/8-4/18-4(a)(4), (West 2012)), and burglary (720 ILCS 5/19(a) (West 2012)), stemming from the shooting of Edwin Obazuaye, a taxi driver. The State elected to proceed on two counts of first degree murder.

¶ 5 On March 14, 2013, Obazuaye suffered multiple lacerations to his head and was shot once in the left side of his back with a .45-caliber bullet. Several days later, he died of that gunshot wound and a heart attack that it had triggered.

¶ 6 At trial, Nicole Rathey testified that on her way home from work during the daylight hours of March 14, 2013, she came to a stop at the intersection of Lafayette Avenue and 91st Street in Chicago. While stopped, she heard a muffled gunshot and saw a burgundy sport-utility vehicle ("SUV") moving very slowly though the intersection. Before the SUV finished crossing the intersection, it came to a stop, and Rathey saw a young black male in a black jacket with dreadlocks and a beard jump out of the rear driver's side window. In the man's right hand was a black gun. Rathey and the young man made eye contact for a few seconds before he ran directly in front of her car and away from the scene. Rathey then saw another young black male jump out

of the same window and flee on foot. The driver of the SUV, with blood running down the side of his head, got out of his vehicle and approached Rathey and informed her that he had been shot. She called 9-1-1 and remained on the scene to talk to the police when they arrived.

¶ 7 Six days after the shooting, Rathey went to the police department to make a statement and to view a lineup. Out of the lineup, she identified defendant as the man who first jumped out of the car window. Rathey testified that she was "100 percent sure" of her identification based upon defendant's face, but that she was only "at least 80 percent sure" of her identification because she questioned whether a man of his build "could actually fit through the window."

¶ 8 Janine Clark testified that she was on foot, about a quarter of a block from the intersection of Lafayette and 91st Street at the time of the shooting. She also saw two black men come head first out of the rear driver's side window of the SUV. Although she could not make out the faces of those individuals, she noted that the first man out of the window had a stocky build, dark skin, and dreadlocks. After seeing the driver exit the SUV in some distress, she too called 9-1-1 and remained on the scene to talk to the police.

¶ 9 Victoria Thomas, a dispatcher for the taxi company, testified that shortly before the shooting, she received a phone call requesting a cab at 8520 South Parnell Avenue for someone named Thomas. The caller gave her a phone number, which she recorded.

¶ 10 Philip Turner testified that, around the time of the shooting, he and defendant lived at 85th Street and Parnell Avenue with Turner's sister and her children. He also testified that he was the only person in the house with a cell phone capable of making and receiving calls. He testified that he did not recall what his phone number was, whether defendant used his phone on the day of the shooting, or whether defendant ever offered him money to get a new phone.

¶ 11 Turner had testified before the grand jury, but he testified at trial that he did not remember his grand jury testimony. Portions of that testimony were published at trial. Before the grand jury, Turner testified that his phone number was identical to the number recorded by the cab company. He testified that, in the presence of Gregory James and Robert Stephenson (Turner's brother and friend, respectively,) defendant borrowed his phone and called for a taxi under the name "Thomas." When Turner asked defendant what he was going to do, defendant answered that he had decided to "take down" a cab, which Turner understood to mean that he would rob the cab driver. Turner testified that he left the apartment shortly thereafter. While he was out, he got a call from the cab company. He told the caller, "whoever called [for the taxi], just honk your horn and possibly they will come out." He neither warned the taxi company nor called the police about his knowledge that defendant intended to "take down" the cab.

¶ 12 Turner then testified that he returned that evening to find defendant at the apartment with bandages on his fingers. When he asked defendant what happened with the cab driver, defendant replied, "It was either me or him. He wasn't giving up his stuff, so I had to blast him." Turner testified that he later saw defendant trying to unjam a .45-caliber handgun. Finally, Turner testified that defendant subsequently gave him money to get a new phone "because he didn't want nothing to fall back on" Turner because his phone had been used to call the cab.

¶ 13 On cross-examination, Turner admitted that he had been arrested in connection with this case and was questioned by the police. He also admitted that he initially lied to the police before asking them, "What can I tell you so I can get out?"

¶ 14 Stephenson testified that he was a friend of defendant, Turner, and James. He also testified that he was present when defendant borrowed Turner's phone and called for a taxi under the fake name "Thomas." Stephenson saw defendant and James leave the apartment and return

15 minutes later. Upon their return, defendant went straight to his bedroom and James, visibly upset, paced "back and forth like he was going to cry or something." Stephenson testified that defendant later called him into the restroom to help him unjam and clean his gun. Stephenson described the gun as a bloody, black and silver .45-caliber automatic. Finally, Stephenson testified that the next day, defendant took Turner's phone, and Turner insisted that defendant give him money for it. James then took the phone from defendant and smashed it on the ground.

¶ 15 From the cab, the police collected a spent .45-caliber cartridge and a number of swabs of blood. At trial, the parties stipulated that an Illinois State Police forensic scientist would testify that she obtained DNA samples from the victim and defendant and that DNA swabs from the SUV were a mixture of two DNA profiles, one of which matched the victim. From the other DNA profile, she could not exclude 74% of unrelated black individuals, including defendant, or 100% of unrelated white or Hispanic individuals.

¶ 16 At the end of the prosecution's case, defendant moved for a directed verdict, which the circuit court denied. At the jury instruction conference, defense counsel objected to the instruction for circumstantial evidence, which the circuit court overruled. Defense counsel did not object to or proffer any other instructions.

¶ 17 In closing, the State did not mention the DNA evidence. Defense counsel, however, argued that although defendant could not be excluded as a contributor to the blood on the outside of the car door, neither could 74% of black individuals, nor 100% of white or Hispanic individuals. In rebuttal, the prosecutor argued, "They want to talk to you about DNA. Who got shot? Who got hit in the head? Who is bleeding from the head, bleeding from a gunshot wound? Mr. Obazuaye. Whose blood was in the cab? Mr. Obazuaye. You know what? What you heard is that he cannot be excluded."

¶ 18 The jury found defendant guilty of murder and also found that he had fired a gun in the commission of that offense. Defense counsel moved for a new trial, arguing that the State had failed to prove every material allegation and that the evidence at trial was insufficient. Defendant also filed a *pro se* motion to vacate judgement, arguing that Turner's inconsistent testimony constituted perjury. The circuit court denied the motions.

¶ 19 At sentencing, the State presented a certified copy of defendant's 2007 conviction for armed robbery and the victim impact statement of Latisha Tyler, the mother of Obazuaye's son. Defendant's mother testified in mitigation that defendant was in the custody of Department of Children and Family Services from the ages of 7 through 17. Defendant also spoke on his own behalf and stated, "I was there, but I just didn't do it."

¶ 20 The circuit court sentenced defendant to 35 years' imprisonment for the murder with a 25-year enhancement for personally discharging a firearm. Defense counsel moved to reduce the sentence; that motion was denied. This appeal followed.

¶ 21 ANALYSIS

¶ 22 Defendant contends that (1) the State failed to prove his guilt beyond a reasonable doubt because Rathey, Turner, and Stephenson were not reliable witnesses; (2) it was plain error for the court to allow irrelevant DNA evidence; (3) trial counsel was ineffective because she stipulated to the admission of irrelevant DNA evidence and failed to request a accomplice witness jury instruction for Turner's testimony; (4) the court abused its discretion in sentencing defendant to a *de facto* life sentence; and (5) the firearm enhancement statute is unconstitutionally vague on its face. We address each argument in turn.

¶ 23 On appeal, defendant challenges the sufficiency of the evidence. He argues that Rathey's eyewitness identification was not reliable because she told the police that she was "80 percent

sure" of her identification. Defendant further argues that Turner and Stephenson were not reliable witnesses because they were biased and self-serving. According to defendant's argument, these witnesses were so incredible that the conviction should be reversed.

¶ 24 When reviewing the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 131 (1999). When the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to defendant's guilt, reversal is justified. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). The jury is in the best position to judge the credibility of witnesses. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). And although that determination is not conclusive or binding on a reviewing court, a criminal conviction will not be overturned just because defendant argues that a witness was not credible. *People v. Gray*, 2017 IL 120958, ¶ 35-36.

¶ 25 Identifications are admissible at trial if, under the totality of the circumstances, the identification is reliable. *People v. Manion*, 67 Ill. 2d 564, 571 (1977) (adopting *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972)). Courts consider the following factors in evaluating the ability of a witness to make a reliable identification: (1) the opportunity of the witness to view defendant at the time of the crime; (2) the witness's degree of attention at the time of the crime; (3) the level of accuracy of the witness's prior description of defendant; (4) the level of certainty

demonstrated by the witness at the time of his confrontation with defendant; and (5) the length of time between the crime and the confrontation. *Id.*

¶ 26 Applying each of the *Biggers* factors, we find that Rathey's identification was reliable. First, Rathey had ample opportunity to view defendant at the scene of the shooting. She testified that she made eye contact with defendant for a few seconds immediately after he leapt out of the SUV window. He then ran directly in front of her car. Those few seconds, in broad daylight and at close proximity, were adequate to support a reliable identification. *People v. Williams*, 143 Ill. App. 3d 658, 662 (1st Dist. 1986) ("a positive identification need not be based upon perfect conditions for observation, nor does the observation have to be of a prolonged nature"). The level of detail in Rathey's description shows the close attention she paid to what she saw on the day of the shooting. She testified that she watched the SUV roll through the intersection and come to a stop. She also testified that she then saw the first of two men jump out of the driver's side rear window. She observed the black gun in defendant's right hand, the black jacket that he was wearing, his facial hair, and his hair style. This testimony shows a level of attention and detail adequate to satisfy the second and third *Biggers* factors.

¶ 27 Defendant argues that Rathey's lack of certainty renders her identification unreliable. She admitted that she was only "80 percent sure" of her identification at the time she made it. However, she testified that she was "100 percent sure" of her identification based upon the defendant's face; Rathey's only misgivings about the identification stemmed from concern about how a man of defendant's size could fit through a car window. The level of certainty in this case is not so low that Rathey's identification is inherently unreliable. See *In re J.J.*, 2016 IL App (1st) 160379, ¶ 34 (photo identification reliable where witness "was only 60% sure of her identification during the photo array").

¶ 28 Finally, the six-day period of time between the crime and the lineup identification was reasonably short. Illinois courts have found identifications to be reliable where significantly more time has elapsed between the crime and the identification. See *People v. Rodgers*, 53 Ill. 2d 207, 213-14 (1972) (upholding an identification made two years after the crime). Given the totality of the circumstances, we find that the six-day lapse did not undermine the reliability of Rathey's identification.

¶ 29 Further, defendant argues that Stephenson and Turner were biased, and that they may have fabricated their testimony to protect Stephenson's best friend and Turner's brother, James. This argument is based in part on Turner's admission that he had lied to the police initially and his question to the police, "What can I tell you so I can get out?" Trial counsel presented this theory to the jury, and the jury apparently concluded that the witness testimony was reliable.

¶ 30 The jury heard statements from Stephenson and Turner that corroborated each other. It also heard the testimony of the taxicab dispatcher who further corroborated the testimony that defendant called for a taxi under the fake name "Thomas" and gave her Turner's phone number. Defense counsel competently pointed out the inconsistencies between Turner's grand jury and trial testimony, and argued in closing that Stephenson and Turner were biased and unreliable. We need not reweigh the evidence and second guess the jury's conclusion as to which witnesses told the truth and when. *People v. Gray*, 2017 IL 120958, ¶ 47 (citing *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004) ("[I]t is the task of the trier of fact to determine when, if at all, [a witness] testified truthfully.").

¶ 31 Viewing all of the evidence in the light most favorable to the prosecution, coupled with the reasonable inferences that may be drawn from it, we conclude that a rational trier of fact could have found defendant's guilt beyond a reasonable doubt.

¶ 32 Next, defendant argues that the DNA evidence was admitted in error, and that his conviction should be reversed. This alleged error was not preserved for appeal because defendant's trial counsel did not object to the admission of the DNA evidence. *People v. Belknap*, 2014 IL 117094, ¶ 66 ("To preserve an alleged error for review, a defendant must both make an objection at trial and include the issue in a posttrial motion."). In fact, trial counsel stipulated to the evidence. Defendant nonetheless asserts that we may review this issue as plain error.

¶ 33 The plain error doctrine is codified in Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967), which states, "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." Ill. S. Ct. R. 615(a). Plain errors may be noticed 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 defendant, regardless of the seriousness of the error," or if the error is "so serious that it affected the fairness of defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). A defendant raising a plain error argument bears the burden of persuasion. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). Defendant restricts his argument to the first prong: that the error threatened to tip the balance of the evidence.

¶ 34 In determining whether the evidence was closely balanced, we perform a commonsense and qualitative, rather than strictly quantitative, assessment of the entirety of the trial evidence in context against the elements of the charged offense. *People v. Sebby*, 2017 IL 119445, ¶ 53; *Belknap*, 2014 IL 117094, ¶¶ 50–53. Evidence is not closely balanced merely because it was circumstantial rather than direct. *Id.*, ¶ 56 ("While there were no eyewitnesses to the crime, other

evidence pointed to defendant as the perpetrator and excluded any reasonable possibility that anyone else inflicted [the victim's] injuries.").

¶ 35 In this case, the evidence of defendant's guilt was overwhelming. The detailed and reliable testimony of Rathey placed defendant at the scene of the crime, leaping out of the victim's SUV with gun in hand, shortly before the victim himself exited the cab and asked for help because he had been shot. Janine Clark also testified that she saw two men, the first of whom matched the description given by Rathey, jump out of the SUV window before the driver got out in distress. Both Turner and Stephenson testified that they were present when defendant called for a cab, using a phone with the same number as was recorded by the cab company. Likewise, they both testified that they later saw defendant attempting to unjam a .45-caliber handgun, the same type of weapon used in the murder. Stephenson testified that the gun that defendant was struggling to unjam was bloody. Turner testified that defendant told him before the shooting that was going to "take down a cab." He also testified that after the shooting, defendant told him that he "had to blast" the cab driver when he refused to "give up his stuff." All of this evidence was not so closely balanced that the admission of the DNA evidence alone threatened to tip the scales of justice against defendant. Therefore, it was not plain error to admit the DNA evidence.

¶ 36 Defendant argues that even if it was not plain error to admit the DNA evidence, trial counsel's performance was defective because she not only failed to object to the DNA evidence, she stipulated to it. When, as here, the trial court did not conduct an inquiry into defendant's ineffective assistance claims, we use a *de novo* standard of review. *People v. Moore*, 207 Ill.2d 68, 75 (2003). To succeed on a theory of ineffective assistance of counsel, the defendant must demonstrate that (1) counsel's performance fell below an objective standard of reasonableness,

and (2) he was prejudiced as a result. *Strickland v. Washington*, 466 U.S. 668, 687 (1984*); People v. Albanese*, 104 Ill. 2d 504, 526 (1984). Prejudice is shown by establishing that there is a reasonable probability that, but for counsel's deficient performance, the outcome of the proceeding would have been different. *Strickland*, 466 U.S. at 687-88. We may resolve an ineffective assistance of counsel claim based only on the prejudice prong. *People v. Patterson*, 2014 IL 115102, ¶ 81.

¶ 37 The second prong of the *Strickland* ineffective assistance test is similar to the first prong of plain error analysis. See *People v. Johnson*, 218 Ill. 2d 125, 143 (2005). For the same reasons that the evidence was not so closely balanced that the conviction should be reversed for plain error, there is no reasonable probability that the outcome would have been different had counsel not stipulated to the admission of the DNA evidence. Consequently, even if counsel's performance fell below an objective standard of reasonableness in stipulating to the DNA evidence, there was no prejudice to defendant.

¶ 38 Defendant next argues that trial counsel's performance was defective because she failed to request Illinois Pattern Jury Instruction ("IPI") 3.17, the accomplice witness instruction, regarding the testimony of Turner. Illinois Pattern Jury Instructions, Criminal, No. 3.17 (4th ed. 2000). As discussed above, to show ineffective assistance of counsel, one must show that (1) counsel's performance fell below an objective standard of reasonableness, and (2) that he was prejudiced as a result. *Strickland*, 466 U.S. at 687. Prejudice is shown by establishing that there is a reasonable probability that, but for counsel's deficient performance, the outcome of the proceeding would have been different. *Id.* at 687-88. We may resolve an ineffective assistance of counsel claim based only on the prejudice prong. *Patterson*, 2014 IL 115102, ¶ 81.

¶ 39 Even if sufficient probable cause existed to believe that Turner was an accomplice to the murder, there was no prejudice in failing to issue the accomplice witness instruction. Among the factors that can be considered in analyzing whether an accomplice witness instruction would have changed the outcome of a trial are the strength of the evidence offered against defendant aside from the accomplice witness's testimony and the instructions that the jury actually received. *People v. McCallister*, 193 Ill. 2d 63, 91 (2000).

¶ 40 There was ample evidence, other than Turner's testimony, for a reasonable fact finder to find defendant guilty. If given, the accomplice witness instruction would have had no effect on the jury's assessment of the other witnesses. Rathey's testimony would have been unaffected by the instruction. She saw defendant leap through the window of the victim's SUV with a gun in hand and her account was corroborated by the testimony of Clark. In addition, Stephenson's testimony would not have been affected by the instruction. He testified that he was present when defendant called for a cab under a fake name, was present when defendant returned after the shooting, and was asked by the defendant to help him unjam and clean a bloody .45-caliber handgun. Similarly, the testimony of the State's witnesses, except for Turner's, would have been unaffected by the accomplice witness jury instruction.

¶ 41 Although the jury did not receive the accomplice witness instruction, it is relevant that it did receive the general pattern instruction on witness credibility. *Id.* at 96. This instruction tells the jury that "[i]n considering the testimony of any witness, [it] may take into account * * * any interest, bias, or prejudice he may have." Illinois Pattern Jury Instructions, Criminal, No. 1.02 (4th ed. 2000). We conclude, therefore, that the jury considered "any interest, bias or prejudice" that Turner had in testifying as he did.

¶ 42 Like the defendant in *McCallister*, defendant here argues that the general instruction on witness credibility is insufficient. *Id.* But as the supreme court found in that case, the fact that the jury was instructed to account for bias and prejudice "may be considered as one factor, among others, which establishes that defendant was not prejudiced by his trial counsel's failure to tender the accomplice witness instruction." *Id.* at 97.

¶ 43 Given the otherwise ample evidence, and the fact that the jury was instructed to consider "any interest, bias or prejudice" that Turner had in giving the testimony that he did, we find that defendant suffered no prejudice as a result of his counsel's decision not to request the accomplice witness instruction.

¶ 44 Defendant next contends that his 60-year sentence is excessive. Specifically, defendant argues that a reduced sentence is warranted based upon his age (28 years), his upbringing and family life, and the fact that he has a single prior conviction. Defendant requests a reduction of his sentence to a term that better balances the punitive and rehabilitative aspects of sentencing, or that we remand the matter for a new sentencing hearing.

¶ 45 In imposing a sentence, the trial court must balance relevant factors, such as the nature of the offense, the protection of the public, and defendant's rehabilitative potential. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). The trial court has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *Id*. In addition, a trial court is not required to expressly outline its reasoning for sentencing, and absent some affirmative indication to the contrary (other than the sentence itself), we must presume that the court considered all mitigating factors in the record. *People v. Perkins*, 408 Ill. App. 3d 752, 762-63 (2011). Since the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors

than to the seriousness of the offense, and the presence of mitigating factors neither requires a minimum sentence nor precludes a maximum sentence. *Alexander*, 239 Ill. 2d at 214. A sentence within statutory limits is reviewed for an abuse of discretion, and we may only alter such a sentence when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Id.* at 212. So long as the trial court does not ignore pertinent mitigating factors or consider either incompetent evidence or improper aggravating factors, it has wide latitude in sentencing a defendant to any term within the applicable statutory range. *Perkins*, 408 Ill. App. 3d at 762-63. This broad latitude means that this court cannot substitute its judgment simply because it might have weighed the sentencing factors differently. *Alexander*, 239 Ill. 2d at 212-13.

¶ 46 Here, the court did not abuse its discretion. First degree murder is punishable by 20 to 60 years' imprisonment. 730 ILCS 5/5-4.5-20(a)(1) (West 2012). When the murder is committed using a firearm, a minimum of 25 years to a maximum of natural life must be added to the term of imprisonment. 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West Supp. 2013). The court sentenced defendant to 35 years for the murder and added the minimum firearm enhancement of 25 years. Because defendant's sentence falls within the statutory range, we may only disturb the sentence if it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Alexander*, 239 Ill. 2d at 212. No such reason applies in this case.

¶ 47 The trial court stated on the record that it considered not only the trial evidence, but also the factors in both aggravation and mitigation, the evidence submitted at sentencing, and the pre-sentencing report. The 25 years added for the use of a firearm was the absolute statutory minimum. In light of defendant's prior conviction for armed robbery, the trial court did not abuse

its discretion in sentencing defendant to a 35-year prison term for the underlying murder conviction, an amount near the low end of the statutory range.

¶ 48 Finally, defendant argues that the firearm enhancement statute is unconstitutionally vague. Specifically, he argues that section 5-8-1(a)(1)(d)(iii) of the Unified Code of Corrections (730 ILCS 5/5-8-1(a)(1)(d)(iii)) is unconstitutionally vague because the broad sentencing range fails to appropriately guide judges, and encourages arbitrary and discriminatory sentencing. He contends that the statute does not provide objective criteria as to where within the range a sentence should fall and, as a result, the imposition of a sentence within the applicable range is entirely up to the whim of a judge. Thus, defendant claims that his sentence enhancement of 25 years' imprisonment is void, and he requests that this court strike the sentence enhancement as unconstitutional.

¶ 49 This court has previously reviewed these very same arguments and found that the firearm enhancement statute is not unconstitutionally vague. *People v. Butler*, 2013 IL App (1st) 120923, ¶ 35, appeal denied, No. 116420, 374 Ill. Dec. 570 (Sept. 25, 2013); *People v. Thompson*, 2013 IL App (1st) 113105, ¶ 121; *People v. Brown*, 2017 IL App (1st) 142197, ¶ 80. We held that the firearm enhancement statute is not unconstitutionally vague because the sentencing range (from 25 years to life imprisonment) and the standards for imposing the enhancement (during the commission of first degree murder, the discharge of a firearm that proximately causes great bodily harm, permanent disability, permanent disfigurement, or death) are clear and definite. *Sharp*, 2015 IL App (1st) 130438, ¶ 141. We see no reason to depart from these well-reasoned cases and further note that the Illinois Supreme Court denied the defendants' petitions for leave to appeal in each of the three cases.

¶ 50 CONCLUSION

¶ 51 Accordingly, we affirm the judgment of the circuit court.

¶ 52 Affirmed.