2018 IL App (1st) 153552-U

SIXTH DIVISION
Order filed: March 30, 2018

No. 1-15-3552

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 12 CR 20656
	)	
MALCOLM LOGAN,	)	Honorable
	)	Kenneth J. Wadas,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the defendant's convictions for first-degree murder and attempted first-degree murder where a victim reliably identified him. The defendant's posttrial request to proceed *pro se* was properly denied as a dilatory tactic. Because the trial court failed to conduct an inquiry into the defendant's *pro se* claim of ineffective assistance, we remand for a hearing under *People v. Krankel*, 102 Ill. 2d 181 (1984). Additionally, we reduce the sentencing enhancement imposed on one of the defendant's convictions for attempted first-degree murder where the evidence did not support a finding of great bodily harm as to that victim. Mittimus modified.

¶ 2 Following a bench trial, the defendant, Malcolm Logan, was convicted of first-degree murder of Lamont Coleman and attempted first-degree murder of William Bradshaw and Fred

Thompson, and sentenced to a total of 76 years' imprisonment. On appeal, he contends that (1) the State failed to prove his identity as the offender beyond a reasonable doubt; (2) the trial court erred in denying his posttrial request to proceed *pro se*; (3) the trial court failed to conduct a preliminary inquiry into his *pro se* allegation of ineffective assistance under *People v. Krankel*, 102 Ill. 2d 181 (1984); (4) the evidence does not support the trial court's finding that Bradshaw and Thompson suffered "great bodily harm" for purposes of mandatory 25-year sentencing enhancements; and (5) the mittimus must be modified to reflect one conviction for first-degree murder. For the reasons which follow, we affirm in part, modify in part, and remand.

¶ 3 In November 2012, the defendant was charged by indictment with, *inter alia*, 42 counts of first-degree murder and 8 counts of attempted first-degree murder arising from a shooting that occurred in Chicago on April 12, 2012. Relevant to this appeal, count 13 of the indictment alleged knowing or intentional murder (720 ILCS 9-1(a)(1) (West 2012)), and count 14 alleged that he acted knowing that his conduct created a strong probability of death or great bodily harm (720 ILCS 9-1(a)(2) (West 2012)). Two counts of attempted first-degree murder, counts 47 and 48, alleged that the defendant personally discharged a firearm and caused great bodily harm to Bradshaw and Thompson, respectively. 720 ILCS 5/8-4(a), 9-1(a)(1) (West 2012).

¶ 4 The defendant elected a bench trial, where he was represented by private counsel. At trial, the State presented the testimony of Bradshaw and Thompson, both of whom had felony convictions for firearm offenses.

¶ 5 Bradshaw, Coleman's cousin, testified that, at approximately 7 p.m. on April 12, 2012, he drove Coleman and Thompson to a liquor store at 115th Street and Halsted. They entered the store, followed by four men who were known to Bradshaw. One of the men, "Little C," stood next to him at the counter. Bradshaw had seen Little C "a lot of times" in "the neighborhood"

and identified him as the defendant. Bradshaw left the store with Coleman and Thompson, followed by the defendant and the other men. They walked "a little too close," so Bradshaw "stepped back to see what they was [*sic*] doing" but did not speak to them. He entered the driver's seat of his Jeep, with Coleman in the front passenger seat and Thompson in back. The defendant and the three other men entered a black Grand Prix, with the defendant driving.[1] Bradshaw had seen him drive the same vehicle on prior occasions.

¶ 6 Bradshaw drove east on 115th Street and stopped at a red light with the Grand Prix behind him. When he continued driving, the defendant followed "[o]n [his] bumper." At a stop sign at 115th Street and Lowe Avenue, three blocks from the liquor store, the defendant drove to the passenger side of the Jeep, "up[ped]" a firearm, and "start[ed] firing." Bradshaw ducked and tried to drive away, but could not restart his vehicle. He heard seven or eight shots and was shot "in the [right] elbow," with the bullet striking him "straight on the side." The bullet came from the "right side," but he was uncertain as to the type of firearm used because "[i]t was so quick." After "a couple of seconds," the Grand Prix turned onto Lowe Avenue and Coleman "holler[ed]" that he was shot. Bradshaw drove to Roseland Hospital, where he treated for his injury and learned that Coleman died. He told the police what happened and, on April 24, 2012, identified the defendant in a photograph array. On October 6, 2012, he went to a police station and identified the defendant in a lineup.

¶ 7 The State published photographs of Bradshaw's Jeep with bullet holes in the front passenger side door, shards of tinted glass on the back seat, and what appear to be small pieces of tinted glass beneath the driver's seat. In the photographs, the Jeep's windshield, rear window, and back passenger's side window are intact, but the back driver's side window is broken. From

[1] The State published videos from cameras located inside and outside the store, which Bradshaw narrated and depict the events described in this part of his testimony.

the photographs, it is unclear whether the front driver's and passenger's side windows are rolled down or broken. According to Bradshaw, the Jeep's "back" windows were tinted but the front windows on the driver's and passenger's sides were not.

¶ 8 On cross-examination, Bradshaw testified that police showed him surveillance videos from the liquor store, but that he did not recall whether he viewed the videos before he identified the defendant in the photo array and lineup. He did not remember telling police that the shooter was six feet, two inches tall or had facial hair, but told police that he had "dreads [*sic*]" and wore a "button-up shirt" with "brown and green." Bradshaw agreed that Coleman was "a big person."

¶ 9 Thompson, who was incarcerated at the time of trial, testified that he left the liquor store with Coleman and Bradshaw, who drove east on 115th Street and stopped behind another vehicle at the stop sign, leaving the Jeep one car length from the sign. Thompson heard gunfire and was "skint" by a bullet on the right side of his head. He ducked and heard another 15 or 16 shots coming toward the passenger side of the Jeep, but did know where the shooter fired from. Afterwards, Bradshaw drove to the hospital and Thompson treated for his injuries. On cross-examination, he stated that the shots were fired from "behind" because he was "[l]ooking straight ahead" and his graze wound went "from back to front." He agreed that it was "getting dark" when the shooting occurred, and that Coleman was a "large" person.

¶ 10 Detective Donald Hall testified that, on April 12, 2012, he spoke with Bradshaw at Roseland Hospital. Afterwards, he directed police officers to 115th Street and Lowe Avenue and began looking for Little C. On April 24, 2012, after learning that Little C was the defendant, he assembled a photograph array. Bradshaw reviewed and signed an advisory form, viewed the photograph array, and identified the defendant as the shooter. Detective Hall then issued an investigative alert for the defendant's arrest.

¶ 11 Detective Alejandro Almazan testified that, on October 5, 2012, following the defendant's arrest, he arranged a physical lineup at the Area South police station. Bradshaw reviewed and signed an advisory form, viewed the lineup, and identified the defendant.

¶ 12 The State entered the stipulated testimony of an evidence technician, who recovered bullet fragments from Bradshaw's Jeep and six spent shell casings on the street at 643 West 115th Street. Photographs entered into evidence depict the shells scattered between the first and second houses preceding the stop sign. The State also entered the report and stipulated testimony of an assistant medical examiner, who determined that Coleman was six feet, five inches tall, weighed 383 pounds, and died from multiple gunshot wounds. According to the assistant medical examiner, Coleman's wounds "coursed" from "front to back, right to left and upward;" "front to back, right to left, and downward;" "front to back, left to right, and upward;" "directly from right to left;" and "left to right and downward." One of the downward wounds entered and exited his "right back."

¶ 13 The State rested and the trial court denied the defendant's motion for directed finding. The defense rested without presenting evidence. Following argument, the court found the defendant guilty of all counts. The court noted that the case did not involve "a split second identification by a witness who doesn't know the offender," and that Bradshaw "had seen the [d]efendant and his car on multiple occasions," was "highly credible," and "knows exactly [what] he saw."

¶ 14 On November 13, 2014, trial counsel filed a posttrial motion and requested that the defendant be evaluated to determine his fitness for sentencing due to "self-inflicted head wounds." A psychologist evaluated the defendant on December 2, 2014, but, in a letter to the court, stated that he could not render an opinion due to the defendant's "evasive answers" and

"lack of cooperation." Dr. Alexis Mermigas, a psychiatrist, interviewed the defendant on April 6 and 22, 2015. At a fitness hearing on June 17, 2015, she testified that she could not render an opinion because, although the defendant could "answer questions appropriately," he was "very hostile," refused to answer questions relevant to his fitness, and ended the second interview after four minutes. Dr. Mermigas stated that the defendant has "a history of suicidal gestures for secondary gain," "does not suffer from any mental illness," and was "fak[ing]" symptoms for his own benefit. Following argument, the trial court found that the defendant was "playing a game" and was fit for sentencing.

¶ 15 On October 8, 2015, trial counsel appeared with the defendant and filed an amended motion for new trial. Counsel informed the court that the defendant sought a continuance to hire a new attorney, but the court stated that the case had been pending "long enough" and the motion would be argued on the next date. The defendant stated that he wanted to "put my motion in," and the court responded that it would not accept "any *** *pro se* motion" because the defendant had counsel.

¶ 16 On October 13, 2015, the defendant filed a *pro se* motion alleging that his attorneys were ineffective for refusing his "request[s]" to (1) file a "motion for identification because the State's witness alleged that the offender was 6 feet 2 inches;" (2) file a "motion for the investigative alert because he was arrested without a warrant;" (3) hire or subpoena a forensic specialist, crime scene technician, or medical examiner; (4) visit him in jail to discuss strategy, instead sending an assistant one day prior to trial; or (5) send an investigator to "investigate" the State's witnesses and "contact potential witnesses." Additionally, the defendant alleged that his attorneys failed to timely communicate with him, did not adequately prepare for trial, and that their "performance and strategy was [*sic*] very poor," particularly in "questioning witnesses and remembering

incident dates." He requested that the court "hold a hearing," find that counsel was ineffective, "appoint a new private counsel," and grant a new trial.

¶ 17 On October 29, 2015, the defendant appeared with trial counsel. The court noted that, in his *pro se* motion, the defendant made "certain allegations that his lawyers didn't perform to his definition of *** qualified performance." The court stated, however, that due to the fitness inquiry, posttrial proceedings had lasted more than one year and, "[a]t this late hour," the defendant's motion was "disingenuous" and "dilatory." The defendant responded that the lawyer he desired was unable to represent him and, therefore, he wanted to "prepare for it *pro se*." He added that the fitness inquiry left "no time" for him to request to proceed *pro se* at an earlier date, but the court stated that, had the defendant made the request "three years ago or so, we would have had a hearing." The court also stated that, "at this stage of the game," the defendant's request to proceed *pro se* "can only be interpreted as another dilatory delaying tactic." The court denied the amended posttrial motion and proceeded to a sentencing hearing.

¶ 18 Following the sentencing hearing, the trial court imposed concurrent terms of 45 years' imprisonment on two counts of first-degree murder (counts 13 and 14), to run consecutively to concurrent "minimum sentences" of 31 years' imprisonment on two counts of attempted first-degree murder (counts 47 and 48). The defendant filed a motion to reconsider sentence, arguing that his sentences for first-degree murder and attempted first-degree murder should be concurrent because Bradshaw's and Thompson's wounds did not constitute severe bodily injury. The court denied the motion, stating that it "thought it was a severe bodily injury." This appeal followed.

¶ 19 For his first assignment of error, the defendant contends that the State failed to prove his identity as the shooter beyond a reasonable doubt because Bradshaw lacked an adequate opportunity to make a reliable identification.

¶ 20 The standard of review on a challenge to the sufficiency of the evidence is whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Belknap*, 2014 IL 117094, ¶ 67. The reviewing court will not substitute its judgment for that of the trier of fact on questions involving conflicts in the testimony, the credibility of witnesses, or the weight of the evidence. *People v. Brown*, 2013 IL 114196, ¶ 48. To sustain a conviction, "[i]t is sufficient if all of the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt." *People v. Hall*, 194 Ill. 2d 305, 330 (2000). All reasonable inferences must be drawn in favor of the prosecution, and the defendant's conviction will be reversed only if the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant's guilt. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011).

¶ 21 "A single witness' identification of the accused is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification." *People v. Slim*, 127 Ill. 2d 302, 307 (1989). In assessing identification testimony, we consider the following five factors set forth in *Neil v. Biggers*, 409 U.S. 188 (1972): (1) the witness's opportunity to view the defendant during the offense; (2) the witness's degree of attention at the time of the offense; (3) the accuracy of the witness's prior description of the defendant; (4) the witness's level of certainty at the subsequent identification; and (5) the length of time between the crime and the identification. *Slim*, 127 Ill. 2d at 307-08. None of these factors, standing alone, conclusively establishes the reliability of identification testimony; rather, the trier of fact is to take all of the factors into consideration. *Biggers*, 409 U.S. at 199-200.

¶ 22 Applying these factors to the present case, a rational trier of fact could conclude that Bradshaw reliably identified the defendant. Regarding the first and second factors, Bradshaw had

an adequate opportunity to view the defendant and exercised a high degree of attention. Per his testimony, he saw the defendant on previous occasions, stood next to him in the liquor store, observed him enter the Grand Prix and follow the Jeep, and saw him raise a firearm and shoot into the vehicle. Contrary to the defendant's suggestion, Bradshaw's account does not suggest that he was distracted by the firearm; indeed, he stated that he could identify the shooter but not the weapon. While the shooting was brief and Bradshaw ducked, neither fact establishes that he lacked the opportunity or degree of attention needed to make a reliable identification. See *People v. Temple*, 2014 IL App (1st) 111653, ¶ 87 (identification was sufficient where the witness did not look at the shooter after the first shot, but knew the shooter from around the neighborhood and did not waver in his identification); *People v. Jaimes*, 2014 IL App (2d) 121368, ¶ 32 (identification was sufficient where the witness viewed the shooter prior to the shooting).

¶ 23 The defendant argues, however, that Bradshaw was "impeached" because, contrary to his testimony, photographs of broken glass beneath the Jeep's driver's seat suggest that its front windows were tinted. We disagree, as no evidence showed that the glass beneath the driver's seat came from the front windows, or that tinted glass would have affected Bradshaw's ability to look out of the vehicle. Moreover, in evaluating Bradshaw's credibility, the trial court was aware that the shooting occurred as the day darkened and that Coleman, who had a large stature, sat between Bradshaw and the side of the vehicle that was closest to the shooter. See *People v. Herrett*, 137 Ill. 2d 195, 200, 204 (1990) (finding that the witness had sufficient opportunity to identify his assailant during a "few seconds" in a dimly lit store); see also *People v. Henderson*, 2016 IL App (1st) 142259, ¶ 166 (deferring to the trier of fact's credibility determination where the witnesses' "abilit[ies] to view were explored by defense counsel on cross examination and

the jury was able to weigh their answers"). Under these circumstances, Bradshaw's opportunity to view the defendant and degree of attention both weigh in favor of a reliable identification.

¶ 24 The third factor, the accuracy of Bradshaw's prior description of the defendant, is not relevant to his reliability because no evidence confirmed or contradicted his testimony regarding the description that he provided to police. Regarding the fourth factor, however, Bradshaw never wavered in his identification of the defendant in the photograph array, lineup, or at trial. While the defendant argues that a witness's confidence is not indicative of the accuracy of his identification, no evidence supports the defendant's theory that, due to panic, Bradshaw mistakenly believed that the man he saw in the liquor store, the shooter, and the defendant were the same person. See *People v. Siguenza-Brito*, 235 Ill. 2d 213, 229 (2009) ("the trier of fact is not required to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt").

¶ 25 Turning to the fifth and final factor, the length of time between the crime and the identification, Bradshaw identified the defendant in the photograph array 12 days after the shooting, and again in the lineup several months later. Neither length of time renders his identification unreliable. See, *e.g.*, *People v. Malone*, 2012 IL App (1st) 110517, ¶ 36 (identification made one year and four months after crime). Based on the foregoing, the *Slim-Biggers* factors support the trial court's determination that Bradshaw reliably identified the defendant. Because the identification was positive and reliable, this evidence alone is sufficient to sustain the defendant's conviction. See *Slim*, 127 Ill. 2d at 307.

¶ 26 Notwithstanding, the defendant submits that shots could not have been fired from the Grand Prix because it sits lower to the ground than the Jeep, and that Thompson's testimony that gunfire came from "behind" the Jeep better comports with the direction of Thompson's and

Coleman's wounds and the location where the spent shell casings were found. We disagree. The record contains no evidence regarding the trajectory of the shells, the angle of the firearm, whether the shooter maintained the same position as he fired, or whether Coleman moved as he was being shot. Notably, the medical examiner opined that Coleman's bullet wounds "coursed" from multiple directions—upward, downward, right to left, and left to right. Based on this record, we will not substitute our judgment for that of the trial court by drawing new inferences from the evidence. See *People v. Green*, 339 Ill. App. 3d 443, 452 (2003) ("The decision as to which of competing inferences to draw from the evidence is the responsibility of the trier of fact."). In this case, where Bradshaw's identification testimony was reliable and the trial court's findings were well-supported by the evidence, the defendant's conviction was not against the manifest weight of the evidence and his challenge is, therefore, without merit.

¶ 27 For his next assignment of error, the defendant contends that the trial court violated his right to self-representation when it denied his request to proceed *pro se* after trial and before sentencing without finding that he was unable to knowingly and voluntarily waive his right to counsel. The defendant did not preserve this issue in the trial court, but argues that we may consider it as plain error. However, the first inquiry before determining whether there was a plain error is to determine whether there was a clear and obvious error. *People v. Eppinger*, 2013 IL 114121, ¶ 19. Absent an error, there can be no plain error and the defendant's forfeiture will be honored. *Id.* For the following reasons, we find that no error occurred.

¶ 28 A criminal defendant's right of self-representation is provided in the sixth amendment to the United States Constitution. U.S. Const., amend. VI; *Faretta v. California*, 422 U.S. 806, 821 (1975). Article I, section 8 of the Illinois Constitution contains a similar provision that guarantees an accused the same right. Ill. Const. 1970, art. I, § 8; *People v. Gorga*, 396 Ill. App.

3d 406, 410 (2009). However, the constitutional right of self-representation is not absolute and may be forfeited if the defendant cannot make a knowing and intelligent waiver of counsel (*People v. Lego*, 168 Ill. 2d 561, 564 (1995)), engages in "serious and obstructionist misconduct" (*People v. Rohlfs*, 368 Ill. App. 3d 540, 545 (2006)), or if his request to represent himself is untimely (*People v. Burton*, 184 Ill. 2d 1, 24 (1998)). "The decision of whether to grant or deny a criminal defendant's request to represent himself is a matter committed to the sound discretion of the trial court, and its ruling in such a matter will not be disturbed on review unless that discretion has been abused." *Gorga*, 396 Ill. App. 3d at 410-11 (citing *Burton*, 184 Ill. 2d at 24-25).

¶ 29 We find no error in the trial court's decision to deny the defendant's request to proceed *pro se*, as his request was untimely and reflected a pattern of obstructionism. The defendant made his request on October 29, 2015, nearly three years after being indicted and more than one year after trial, on the date of the hearing for his amended posttrial motion and sentencing. While the defendant denies responsibility for the lengthy process involved in determining his fitness, a psychologist met with him less than one month after trial counsel requested an evaluation and could not render an opinion due to his evasive and uncooperative conduct. Several months later, Dr. Mermigas interviewed the defendant and noted that he was hostile, refused to answer relevant questions, and ended one of their meetings after just four minutes; she concluded that he was "fak[ing]" symptoms for his own benefit. These circumstances support the court's determination that the defendant was "playing a game" in the months following his trial and was, therefore, responsible for the delay. See *Gorga*, 396 Ill. App. 3d at 410 (the circuit court did not err in denying the defendant's request to proceed *pro se* after trial and before sentencing); see

also *People v. Bridgewater*, 388 Ill. App. 3d 787, 799 (2009) (noting that defendants should not be able "to indefinitely delay their sentencing" through obstructionist conduct).

¶ 30 To the extent the defendant argues that he did not ask for a continuance and that proceeding *pro se* would not have caused additional delays, we note that he never told the trial court he was ready to represent himself—rather, he stated that he wanted to discharge his attorneys and, afterwards, "*prepare* for it *pro se*." (Emphasis added.) We also reject the defendant's argument that the court mistakenly believed that, as a matter of law, he could have represented himself "three years ago" at trial but not at sentencing. Read in context, the court's statement commented on the dilatory nature of the defendant's request, which was made only after posttrial proceedings had been delayed for more than one year by the defendant's own conduct. Given this record, the court did not abuse its discretion in denying the defendant's request to proceed *pro se* and, as such, no error occurred. The defendant's request for plain error review is, therefore, without merit.

¶ 31 Next, the defendant contends that the trial court erred in failing to conduct a preliminary inquiry into his allegation of ineffective assistance under *People v. Krankel*, 102 Ill. 2d 181 (1984).

¶ 32 Pursuant to *Krankel*, when a defendant raises a *pro se* claim of ineffective assistance of counsel, the trial court must conduct a preliminary inquiry into the factual basis to determine whether possible neglect of the case warrants the appointment of new counsel. See *People v. Patrick*, 2011 IL 111666, ¶ 32. To raise a claim of ineffective assistance, "a *pro se* defendant is not required to do any more than bring his or her claim to the trial court's attention." *People v. Moore*, 207 Ill. 2d 68, 79 (2003). After the defendant raises a claim of ineffective assistance, the trial court may conduct a preliminary investigation by (1) questioning trial counsel about the

facts and circumstances of the allegations, (2) discussing the allegations with the defendant, or (3) "bas[ing] its evaluation *** on its knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations on their face." *Id.* at 78-79. If the preliminary investigation reveals that the defendant's allegations "lack*** merit or pertain*** only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion." *Id.* at 78. However, if the court fails to conduct the necessary preliminary examination of the defendant's allegations, the case must be remanded for the limited purpose of allowing the court to do so. See *People v. Remsik-Miller*, 2012 IL App (2d) 100921, ¶¶ 17, 19. The question of whether the trial court was required to conduct a *Krankel* inquiry is a question of law to be reviewed *de novo.* See *Moore*, 207 Ill. 2d at 75.

¶ 33 The State does not contend that the trial court held a *Krankel* hearing but, instead, claims that no hearing was required under *People v. Pecoraro*, 144 Ill. 2d 1 (1991), which the State cites for the proposition that *Krankel* only applies to court-appointed counsel. In *Pecoraro*, the supreme court held that the trial court was not obligated to appoint new counsel pursuant to *Krankel* and alter the attorney-client relationship where the defendant had retained private counsel to represent him both at trial and at the hearings on his posttrial motion. *Id.* at 14-15. Since *Pecoraro*, however, our supreme court has implicitly rejected the notion that *Krankel* only applies to appointed counsel. See *People v. Taylor*, 237 Ill. 2d 68, 78 (2010) (Burke, J., specially concurring) ("the majority assumes, without deciding, that *Krankel* applies to privately retained counsel since it addresses the merits of defendant's claim on a factual basis"). Additionally, we agree with the holding in *People v. Johnson*, 227 Ill. App. 3d 800, 810 (1992), where the court stated that it did not believe that *Pecoraro* stood for the proposition that a trial court may "automatically deny a *pro se* request for new counsel simply because the defense counsel who

was allegedly ineffective was privately retained." Therefore, we reject the State's position that *Krankel* only applies to court-appointed counsel.

¶ 34 Turning to the present case, the record shows that, on October 13, 2015, the defendant filed a *pro se* motion raising allegations of ineffective assistance. These included claims that counsel failed to file certain motions; hire or subpoena expert witnesses; timely communicate or visit him in jail to discuss strategy; "investigate" the State's witnesses; "contact potential witnesses;" or adequately prepare and perform at trial. At a hearing on October 29, 2015, the trial court acknowledged the defendant's motion and noted that he made "certain allegations that his lawyers didn't perform to his definition of *** qualified performance." The court stated, however, that posttrial proceedings had lasted more than one year and, "[a]t this late hour," the motion was "disingenuous" and "dilatory."

¶ 35 Based on the foregoing, we find that the trial court erred in failing to conduct a preliminary inquiry under *Krankel*. As our supreme court explained in *People v. Ayres*, 2017 IL 120071, a claim of ineffective assistance "need not be supported by facts or specific examples" because "[t]he purpose of the preliminary inquiry is to ascertain the underlying factual basis for the ineffective assistance claim and to afford a defendant an opportunity to explain and support his claim." *Id.* ¶¶ 6, 19, 24 (finding that the defendant was entitled to a *Krankel* hearing after filing a *pro se* petition that merely alleged "ineffective assistance of counsel"). While the defendant's *pro se* motion is factually sparse and certain claims therein relate to issues that are generally matters of trial strategy, the record demonstrates that no interchange occurred between the court and the defendant or trial counsel as to the defendant's allegations. Additionally, the record does not show that the court evaluated the allegations on the merits in light of its own observations of counsel's performance but, instead, dismissed them based on the defendant's

dilatory conduct. Therefore, the cause must be remanded for the limited purpose of allowing the trial court to conduct a *Krankel* hearing on the allegations of ineffective assistance contained in the defendant's *pro se* motion of October 13, 2015.

¶ 36 It is necessary to address two additional contentions raised by the defendant regarding his sentence and the mittimus. As to his sentence, the defendant alleges that the evidence does not support the imposition of mandatory 25-year firearm sentencing enhancements on his convictions for attempted first-degree murder, as no evidence showed the extent of Bradshaw's and Thompson's injuries, or whether they sustained lingering disabilities that required follow-up treatment.

¶ 37 The trial court sentenced the defendant on two counts of attempted first-degree murder, counts 47 and 48, which alleged that he personally discharged a firearm and caused great bodily harm to Bradshaw and Thompson, respectively. 720 ILCS 5/8-4(a), 9-1(a)(1) (West 2012). The sentencing provision at issue provides that "an attempt to commit first degree murder during which the person personally discharged a firearm that proximately caused great bodily harm, *** is a Class X felony for which 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court." 720 ILCS 5/8-4(c)(1)(D) (West 2012). A person who personally discharges a firearm during an attempted first-degree murder *without* causing great bodily harm is subject to a mandatory 20-year sentencing enhancement. 720 ILCS 5/8-4(c)(1)(C) (West 2012). The defendant argues that the court did not find that he caused great bodily harm to either victim; however, because attempted murder is a Class X felony for which the minimum sentence, without enhancements, is six years' imprisonment, a finding of great bodily harm is implicit in the court's holding that the "minimum sentences" for both attempted murder offenses

is 31 years' imprisonment. See 720 ILCS 5/8-4(c)(1) (West 2012); 730 ILCS 5/5-4.5-25(a) (West 2010).

¶ 38 As only a limited number of cases have addressed the meaning of the phrase "great bodily harm" used in the 25-year sentencing enhancement of the attempted murder statute, we will apply the same definition of great bodily harm as has been applied in aggravated battery cases. See, *e.g.*, *People v. Mimes*, 2014 IL App (1st) 082747-B, ¶ 29. The term great bodily harm "is not susceptible of a precise legal definition," but requires "an injury of a greater and more serious character than an ordinary battery." *People v. Figures*, 216 Ill. App. 3d 398, 401 (1991); see also *People v. Mays*, 91 Ill. 2d 251, 256 (1982) (bodily harm, as it relates to ordinary battery, requires "some sort of physical pain or damage to the body, like lacerations, bruises or abrasions, whether temporary or permanent"). "Great bodily harm does not require hospitalization of the victim, or permanent disability or disfigurement, but instead centers on the injuries that the victim received." *People v. Lopez-Bonilla*, 2011 IL App 2d 100688, ¶ 13. "[I]t is the role of the trier of fact to determine if the injuries rise to the level of great bodily harm." *People v. Watkins*, 243 Ill. App. 3d 271, 277 (1993).

¶ 39 Turning first to Bradshaw's injuries, we believe that the evidence was sufficient to support a finding that he suffered great bodily harm. Bradshaw testified that he was shot "in the [right] elbow," with the bullet striking him "straight on the side," and treated at a hospital. Given that he was struck by a bullet "in" his elbow, we cannot say that no rational trier of fact could have concluded that his injury did not constitute great bodily harm. See *People v. Johnson*, 149 Ill. 2d 118, 128-29, 159 (1992) (finding great bodily harm where the victim was shot "in the shoulder"); see also *People v. Daniels*, 2016 IL App (4th) 140131, ¶¶ 102-03 (noting that a gunshot wound in which a bullet enters the victim's body generally constitutes great bodily

harm). As such, we will not disturb the 25-year enhancement imposed as part of the defendant's sentence for attempted first-degree murder of Bradshaw.

¶ 40 As to Thompson's injuries, however, the only evidence was that he was "skint" by a bullet on the right side of his head and treated at the hospital. Although Thompson sustained the graze wound at close range, it is impossible to infer the gravity or seriousness of the injury from the minimal evidence adduced at trial. Compare *Watkins*, 243 Ill. App. 3d at 278 (finding no great bodily harm where "there is no evidence that the bullet affected [the victim] in any manner other than grazing his side") with *Lopez-Bonilla*, 2011 IL App 2d 100688, ¶¶ 18-19 (finding great bodily harm where "there was specific evidence about the nature and extent" of the victim's injuries, including photographs and testimony that the injuries bled). Notably, the fact that a wound was caused by a bullet does not necessarily establish the great bodily harm requirement. See *People v. Ruiz*, 312 Ill. App. 3d 49, 63 (2000) (gunshot wound to the victim's knee was not a severe bodily injury where the wound was barely visible on the day of the incident); *Figures*, 216 Ill. App. 3d at 402 (finding no great bodily harm where the victim required treatment for a gunshot wound that "pierced his shoe but did not penetrate the skin"). Accordingly, because the evidence was insufficient to support a finding that Thompson's wounds constituted great bodily harm, we reduce the defendant's sentence for attempted first-degree murder of Thompson by five years to reflect a 20-year enhancement for personally discharging a firearm without causing great bodily harm. 720 ILCS 5/8-4(c)(1)(C) (West 2012); Ill. S. Ct. R. 615(b)(4) (eff. Aug. 27, 1999).

¶ 41 Finally, the defendant contends, and the State correctly concedes, that the mittimus should be modified to reflect a single conviction and sentence for first-degree murder. The trial court sentenced the defendant to concurrent terms of 45 years' imprisonment on two counts of

first-degree murder—one count alleging knowing or intentional murder (count 13), and the other count alleging that the defendant acted knowing that his conduct created a strong probability of death or great bodily harm (count 14). Where, as here, there is one murder victim, sentence should be imposed on only the most serious count of murder and any less serious convictions should be vacated. *People v. Cardona*, 158 Ill. 2d 403, 411 (1994). Consequently, we vacate the defendant's conviction and sentence for count 14 and direct the circuit court clerk to amend the mittimus to reflect a single conviction and sentence for murder under count 13. See *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995); Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999).

¶ 42 In summary, we find that the defendant was convicted of first-degree murder and attempted first-degree murder beyond a reasonable doubt, and the trial court did not err in denying his posttrial request to proceed *pro se*. The evidence supports the court's determination that Bradshaw, but not Thompson, suffered great bodily harm; as such, we reduce the defendant's sentence for the attempted first-degree murder of Thompson by five years to reflect a 20-year enhancement for personally discharging a firearm. We modify the mittimus to reflect one conviction for first-degree murder, and remand the cause for the limited purpose of allowing the trial court to conduct a *Krankel* hearing on the allegations of ineffective assistance contained in the defendant's *pro se* motion of October 13, 2015.

¶ 43 Affirmed in part, modified in part, and remanded.