FIRST DIVISION
March 12, 2018

No. 1-16-0415

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 16252-01
	)	
KENNETH MCDONALD,	)	Honorable
	)	William Hooks,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Pierce and Justice Simon concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction is affirmed where (1) the evidence supports the trial court's finding that defendant did not act in self-defense when he shot the victim; (2) the court did not misunderstand or fail to recall crucial evidence in defendant's case; and (3) trial counsel provided reasonable representation. Defendant's sentence is also affirmed where it falls within the applicable sentencing range and the trial court did not give weight to any improper factors in determining the sentence. Finally, no *Krankel* inquiry was required where defendant did not claim his counsel was ineffective and merely made conclusory statements about how his counsel could have done better.

¶ 2 Defendant, Kenneth McDonald, appeals his conviction of first degree murder after a bench trial and his sentence of 50 years' imprisonment. On appeal, defendant contends 1) his conviction should be reduced to second degree murder because evidence shows that he acted pursuant to an unreasonable belief in self-defense; 2) his trial counsel was ineffective when he conceded that there was no imminent threat to defendant and defendant's belief in the need to use force was unreasonable; 3) he is entitled to a new sentencing hearing where the trial court considered improper factors and incompetent evidence in sentencing him; and 4) the trial court failed to conduct a preliminary investigation into defendant's allegations of ineffective assistance of counsel as required by *People v. Krankel*, 102 Ill. 2d 181, 189 (1984). For the following reasons, we affirm.

¶ 3 JURISDICTION

¶ 4 The trial court sentenced defendant on January 11, 2016. A notice of appeal was filed on January 11, 2016. Accordingly, this court has jurisdiction pursuant to Article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, §6) and Rule 603 (eff. Oct. 1, 2010) and Rule 606 (eff. Mar. 20, 2009), governing appeals from a final judgment of conviction in a criminal case entered below.

¶ 5 BACKGROUND

¶ 6 Defendant was charged by indictment with six counts of first degree murder in the death of Donald Lewis. At defendant's bench trial, Rickey Pulley testified that on July 21, 2013, around 4:00 a.m., he was celebrating the birthday of Ernest Shedd along with Lewis, Artis Bryant, James Bryant, Dontae Brock, and Darryl Johnson. They were on the sidewalk in the 800 block of North Cambridge in Chicago when he heard two shots and then a few more. The shooter wore all black, had the hood of his sweatshirt up, and his face was covered. His arm was straight

out aiming the gun, and although Lewis tried to run away the shooter kept firing. The shooter caught up to Lewis and tried to grab him by the back of his shirt. The shooter then threatened Artis Bryant by pointing the gun at him. Pulley heard someone yell that there was a gun behind the tire of a van parked nearby so he got the gun and fired, hitting the shooter. The shooter began to run and Pulley chased him to the playground where the shooter collapsed. As Pulley approached, the shooter jumped up and aimed his gun at Pulley so Pulley fired once more and the shooter collapsed again. Pulley then ran away from the scene, threw the gun into the Chicago River, and hid at a friend's house. He stated that he did not see the shooter's face nor did he identify defendant as the shooter at trial.

¶ 7 At the time of trial, Pulley was in jail for not appearing in court as ordered. He had been arrested for domestic violence and aggravated assault. He also had a previous conviction for aggravated vehicular hijacking with a firearm and he had violated the terms of his mandatory supervised release by possessing a weapon. He was convicted of unlawful use of a weapon by a felon. Pulley refused to speak to the prosecutor before testifying.

¶ 8 James Bryant testified that he and defendant's aunt have a child together. On July 21, 2013, at 4:00 a.m., he was partying with a group of people and he was intoxicated. He got into an argument with "Little Tom" over money. No one had a gun. He did not speak with defendant, nor did he see anyone argue with defendant, before the shooting. Lewis was "[j]ust standing there" when the shooter approached. After Lewis was shot, James gave the keys to his sister's car to Artis and told him to drive Lewis to the hospital. Later, he saw paramedics carrying defendant on a stretcher but he did not recognized defendant as the shooter.

¶ 9 James testified that he met with police on July 22, 2013, but he did not recall telling them he saw defendant, wearing all black, approach him and then walk away. Rather, he told police

that after defendant walked away, a man in dark clothing with his face covered ran towards Lewis. He was unsure whether he told police that he heard two shots, then four more in rapid succession. James acknowledged that he met with the assistant state's attorney (ASA) and identified his signed statement, but he did not tell the ASA that paramedics carried defendant on a stretcher or that he recognized defendant as the shooter. He identified his signatures on a photo array advisory form and a photo array on which he circled defendant's photograph. However, James testified that he did not write "I saw him shot [Lewis]" underneath defendant's photograph, and claimed those words were added after he signed the array.

¶ 10 James acknowledged that he testified before the Grand Jury, where he stated that the police and ambulance arrived at the area the shooter ran towards, and 15-20 minutes later he saw "Little Ken" brought on a stretcher. The man on the stretcher wore all black, similar to the shooter. James had previously been convicted of aggravated battery causing great bodily harm, unlawful use of a weapon, and aggravated discharge of a firearm. He also had convictions for home invasion and aggravated battery causing great bodily harm with a baseball bat.

¶ 11 Dontae Brock testified that he has a child with defendant's sister and that is how he knew defendant. He stated that he was an alcoholic and used drugs. He did not recall if he was on the 800 block of North Cambridge on July 21, 2013, around 4:00 a.m., but he may have been in the area. He did not recall telling police the following: that on July 21, 2013, he was celebrating Shedd's birthday in the 800 block of North Cambridge with his friends, and Bryant and "Little Tom" got into a fight. Everything was fine when he heard someone running up behind him. He saw a man with his hood up and a t-shirt over his nose, run up to Lewis while carrying a handgun. Lewis tried to run but the man chased him and then shot him. Brock approached Lewis and saw he was holding his stomach. Brock knew Lewis had been shot and he then heard more

shots coming from the area where the shooter had emerged. He helped Artis get Lewis into a car and he saw the police and ambulance arrive at the scene. He saw defendant on a stretcher and recognized him as the shooter. Brock did not have a gun that night nor did he see anyone in his group with a gun.

¶ 12 Brock identified his signature on a photo lineup advisory form, but testified that he did not know what he was signing. He also identified his signature on a photo array, but testified that he did not circle defendant's photograph or identify him as the shooter to the police. He did not recall meeting with the ASA or agreeing to provide a written statement. Although he identified his signature on the written statement, he testified that he did not recognize the document and did not recall reviewing the statement or signing it after making an addition. Brock did not recall testifying before the Grand Jury on August 8, 2013. He did not recall telling the Grand Jury that he agreed to provide a handwritten statement which he reviewed and signed. Brock stated that he did not want to testify at trial and he refused to speak with the prosecutor about his prior statements.

¶ 13 On cross-examination, Brock stated that he had a conviction for aggravated unlawful use of a weapon and that at the time of his written statement, he had another pending gun case.

¶ 14 Chicago Police Detective Frank Szwedo arrived at the scene and learned that Lewis and defendant had been taken to the hospital. In the area from Cambridge Street to where defendant was shot, he found four expended 9-millimeter shell cases and a trail of blood. Detective Szwedo learned that a resident informed police of a discarded semiautomatic handgun found in a grill on the resident's porch landing. He recovered the weapon and noticed Chicago Housing Authority (CHA) surveillance cameras. He requested video footage from the CHA and POD footage from

the police. When he went to Northwestern Hospital, he learned that Lewis had died and defendant was still being treated. He did not speak with defendant at the hospital.

¶ 15 Detective James DeCicco viewed the CHA videos and returned to the crime scene. He found a .38 caliber revolver in a grassy area next to where defendant first fell as he was running back to the courtyard. The weapon was subsequently recovered by an evidence technician. After viewing the CHA video, police determined that Pulley was the one who shot at defendant. Detective DeCicco was present when Pulley was interviewed by police and when he gave his statement to ASA Patti Melin. The police processed Pulley's car the next morning. The parties stipulated that the People's Exhibits 51 and 52 are true and accurate copies of CHA videos reflecting what occurred in the area of 850 North Cambridge. The State published clips from these exhibits while Detective DeCicco narrated.

¶ 16 On cross-examination, Detective DeCicco testified that one clip shows Lewis giving something to Darrell Johnson and Johnson then opens the door to his car and places something inside. In another clip, Lewis appears to be holding something that gives off a reflection. Detective DeCicco stated, however, that he did not find anything in the course of his investigation that would lead him to believe Lewis had a gun or that someone pointed a gun at defendant prior to defendant firing shots.

¶ 17 Detective Daniel Gallagher supervised the investigation and reviewed the surveillance videos. He spoke with James Bryant at the police station and James' statement was consistent with what was depicted on the videos. Detective Gallagher showed James a photo array and James identified defendant as the shooter. James circled defendant's photo, wrote that defendant was the shooter, and then he initialed the photo. He identified the photo array advisory form and

photo array which James signed. He stated that James also gave a handwritten statement to an ASA from felony review.

¶ 18 Detective Gallagher also interviewed Brock. Brock viewed a photo array and identified defendant as the shooter. Brock circled defendant's picture but would not write that he identified defendant as the shooter on the array. Detective Gallagher identified the photo array advisory form and photo array signed by Brock, and stated that Brock also gave a handwritten statement to an ASA from felony review. He identified Brock's handwritten statement, the State's Exhibit 22, which was then published.

¶ 19 In the statement, Brock stated that on July 21, 2013, he and James Bryant wanted to celebrate Shedd's birthday. James and "Little Tom" got into an argument but they stopped fighting and everyone hung around having drinks. Brock did not notice anything was wrong until he heard someone running from behind. Brock saw a man with his hood up and a t-shirt over his nose, carrying a gun. The man ran to Lewis and started shooting. Lewis ran up the street and the man chased him while continuing to shoot at him. Brock went to Lewis who was holding his stomach. He knew Lewis had been shot and helped him into a car so that Artis Bryant could take him to the hospital. Brock saw the police and ambulance arrive, and saw them carry the shooter on a stretcher. Brock recognized the man on the stretcher as defendant. He did not recall asking the ASA to add that neither he nor Lewis had a gun that night.

¶ 20 The State also published Brock's grand jury testimony, where he stated that on July 21, 2013, around 4:00 a.m., he was on the 800 block of North Cambridge celebrating Shedd's birthday. He stated that he heard footsteps, turned around and saw a man wearing all black running from the parking lot with his face covered and a gun in his hand. The man shot at Lewis, chased him and continued shooting. Artis took Lewis to a hospital and Brock heard a second set

of shots in the area where the shooter had come from. He saw defendant carried on a stretcher. No one in Brock's group had a gun that night. He later met with police and an ASA and gave a statement consistent with his Grand Jury testimony.

¶ 21 The parties stipulated that if called to testify, Deputy Medical Examiner Dr. Ariel Goldschmidt would state that he performed a post-mortem examination of Lewis and observed several gunshot wounds and gunshot-related fractures. He concluded to a reasonable degree of scientific certainty that the cause of death was multiple gunshot wounds and the manner of death was a homicide.

¶ 22 The parties stipulated that if called to testify, ASA Amanda Pillsbury would state that on August 7, 2013, she interviewed James Bryant and brought him before the Grand Jury where he testified. She would identify the People's Exhibit 90 as a true and accurate copy of James's testimony before the Grand Jury. She would also state that she interviewed Brock, reviewed his handwritten statement, and brought him before the Grand Jury where he testified. She would identify the People's Exhibit 91 as a true and accurate copy of Brock's Grand Jury testimony.

¶ 23 The parties stipulated that Chicago Police Investigator Carl Brasic would testify that he recovered from Northwestern Hospital a black hooded sweatshirt obtained from defendant. Mary Wong, an expert in the field of gunshot residue testing and ballistics, would testify that she received as evidence defendant's clothing and concluded within a reasonable degree of scientific certainty that defendant's jacket contained the presence of gunshot residue or was in the environment of a discharged firearm. Mark Pomerance, an expert in the field of ballistics and gunfire comparison, would state that he received the .38 caliber revolver and concluded with a reasonable degree of scientific certainty that the two bullet fragments recovered from Lewis were fired from the revolver.

¶ 24 The parties finally stipulated that if called to testify, ASA Patricia Melin would state that on July 23, 2013, she met with Brock and he agreed to give a written statement. She typed the statement and after reviewing it, Brock made a correction which he initialed, and then he signed both pages of the statement. She would also testify that on July 24, 2013, she met with James Bryant and he agreed to give a written statement. He stated that he knew defendant since he was a kid, and he was present at the time of the murder, but he did not see the shooter's face because it was covered at the time of the shooting. After the shooting, he saw the shooter on the stretcher and recognized defendant as the shooter. After reviewing the statement, James made some changes which he initialed, and signed each page of the statement. She would identify the People's Exhibit 17 as James's statement.

¶ 25 The State admitted the exhibits and rested. Defendant filed a motion for a directed finding which the trial court denied.

¶ 26 At trial, defendant testified that he spent his childhood in Cabrini Green and that the gang around Cabrini Green is the D Block faction of the Gangster Disciples (GDs). Although he was not a member of a gang, his father, uncle, and cousins were gang members. He learned about the gangs in his neighborhood and his father told him about street code. He heard that people who report crimes to the police "could get killed." Growing up, defendant saw GDs with guns and he witnessed "violations" where a group of people would beat someone.

¶ 27 Defendant testified that he has known James, a GD, all his life. James was acquitted of murder in 2000, and defendant had seen James with a gun selling drugs. He saw Artis shooting guns on New Year's Eve. He also knew Pulley, and when he bought marijuana from him in the past, defendant saw a gun on Pulley's lap. He had heard that Pulley robbed people and shot at gang members. He had heard that Pulley and the Bryants had committed a home invasion in

2005 or 2006 and beat someone who owed them money. Defendant has also known Brock his entire life and Brock was involved in shoot-outs with rival gangs. Brock and Lewis associated with the Bryants, and they sold drugs, carried guns, and got involved in shoot-outs.

¶ 28 Although defendant moved out of Cabrini Green before July 21, 2013, he still had family there including his sister Kenesha McDonald. Kenesha and Brock had a child together. Brock had been arrested some time before 2013 and was in custody for five or six months. In June 2013, while Brock was in custody, Kenesha gave defendant two guns, money, and crack cocaine, all of which she was holding for Brock. Kenesha did not want her child to have access to the guns. She told defendant that she would give him more money if he helped her sell the cocaine. Defendant called his friends about the drugs but he did not sell the cocaine himself.

¶ 29 On July 21, 2013, defendant spoke with Marshana Pratt, who was pregnant with his child, outside of 1010 Cambridge. Around 3:00 a.m., after speaking with Pratt, defendant walked south on Cambridge to look for Kenesha because he needed someone to drop him off in Englewood. Kenesha told defendant she would ask Brock to take him.

¶ 30 Brock asked him about a shooting he witnessed, and told defendant not to tell police about it because Brock was responsible for the shooting. As they walked down Cambridge, Brock gave defendant alcohol and then asked defendant for his gun, money, and cocaine. Defendant told Brock he needed to speak to Kenesha, although defendant had one of Brock's guns with him at the time. He told Brock he had one of his guns and Brock got loud and told defendant "to go get his s**t." They ran into James, and after hearing what Brock had to say, James told defendant "You already know how we get down." Defendant understood that to mean he would be shot or beaten. Lewis, Shedd, Johnson, and Pulley showed up. No one pulled a weapon at this time or grabbed defendant.

¶ 31 Defendant testified that he heard someone yell, "Show Time" which meant the police were coming. Everyone moved about as if they were doing something else and defendant started walking south on Cambridge towards Chicago Avenue. Defendant walked around to the back of a house and tried to call Kenesha while he stood on some stairs. He wanted to ask her to get Brock under control, but he was unable to reach her. Defendant then received a call from Brock, who told him, "[B]oy I don't think you going to get our s**t," before hanging up. Defendant tried to call Kenesha once more but could not reach her. Brock called again, telling defendant "dude already put the SOS on you." SOS meant "Shoot on sight." He told Brock to speak with Kenesha.

¶ 32 Defendant did not want to call the police because he did not want to get hurt or have his family hurt. He knew the GDs had a lot of members and he could run into them. He also knew that the GDs had guns hidden around the area. Defendant decided he would try to scare his way out and "at the same time, try to move them away from my family house." He saw the group walking toward his family house so he "ran up on the gang" and fired at Lewis because he saw a gun on him. Lewis looked like he was grabbing or pulling something up and then he ran away. Defendant chased Lewis and continued shooting. As defendant was running, he was shot about 11 times from behind.

¶ 33 Defendant was asked about the video obtained by police and admitted that he was the shooter on the video. When asked by defense counsel whether he could "have walked away from the group that night at that point in time" defendant answered, "Yes." He acknowledged he could have walked away and tried to go somewhere else, but he did not believe he could avoid the group because he "was going to bump into them anywhere [he goes.]" He stated that he had an SOS on him and "[p]eople get shot when there is an SOS on a person."

¶ 34 On cross-examination, defendant stated that although he moved to Englewood he came to Cambridge to hang out with his friends. His girlfriend lived a block and a half from the area. Defendant stated he never tried to give Brock his gun and that before shooting at Lewis, he pulled his shirt over his nose to cover his face. He stated that the punishment for killing a gang member is retaliation.

¶ 35 Before rendering its verdict, the trial court stated that it did not give any weight "to the attempts of the recants by the witnesses, who for whatever reason, decided to come in this courtroom and attempt to change history with respect to the statements they previously made by way of testimony before the Grand Jury, statements to law enforcement." The court also stated that it "tried to look at this from [defendant's] point of view over the course of two or three days. *** After a thorough review, re-review, review after review, ***[i]t is very clear with proof beyond a reasonable doubt that [defendant] executed, killed, intentionally used a firearm to take out and sniff out and stuff out the life of the intended victim." It called the shooting "a very specific attack." The court acknowledged defense counsel's efforts, but found that "as skillful as defense counsel was, there is absolutely no evidence that this act was committed in self-defense, defense of another, and it was based on anything of record that would have justified in any manner whatsoever the very troubling murder of Mr. Lewis." Accordingly, the trial court found defendant guilty on all six counts of first degree murder.

¶ 36 Defendant filed a motion to vacate findings and enter a finding of guilt on second degree murder, or for a new trial. After a hearing, the trial court denied the motion after reviewing "the totality of the evidence heard during trial," posttrial arguments, and "[d]efendant's evidence and arguments as it relates to the [d]efense's proposition" that his conviction should be reduced to second degree murder. The court found defendant's argument that he had to act in defense of

himself or others "ridiculous," and also found no credible evidence that defendant was "operating under any legitimate or any stretch of the imagination theory of having to act in the manner in which he did which caused" Lewis's death. The trial court concluded "[i]f there is ever a first degree murder case, this is a first degree murder case ***." The court sentenced defendant to 50 years' imprisonment. Defendant filed a motion to reconsider sentence which was denied, and he then filed this timely appeal.

¶ 37 ANALYSIS

¶ 38 Defendant contends his conviction should be reduced to second degree murder because he acted pursuant to an unreasonable belief in self-defense. To obtain a conviction for second degree murder, the State must prove defendant guilty of first degree murder beyond a reasonable doubt. The burden then shifts to defendant to prove by a preponderance of the evidence the existence of a mitigating factor. 720 ILCS 5/9-2(c) (West 2016). The mitigating factor of imperfect self-defense is proved when "[a]t the time of the killing [defendant] believes the circumstances to be such that, if they existed, would justify or exonerate the killing under the principles stated in Article 7 of [the Criminal Code of 2012], but his or her belief is unreasonable." 720 ILCS 5/9-2(a)(2) (West 2016). Since defendant does not challenge the trial court's finding that he committed first degree murder beyond a reasonable doubt, we determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found that the mitigating factors were not present." *People v. Blackwell*, 171 Ill. 2d 338, 358 (1996).

¶ 39 Article 7 states that a person "is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another ***." 720 ILCS 5/7-1(a)

(West 2016). To claim self-defense, a person must present evidence on each of the following elements: (1) unlawful force was threatened against him; (2) he was not the aggressor; (3) the danger of harm was imminent; (4) use of force was necessary; (5) he actually and subjectively believed a danger existed that required the use of the force applied; and (6) his belief was objectively reasonable. *People v. Lee*, 213 Ill. 2d 218, 224-25 (2004). "The imperfect self-defense form of second degree murder occurs when there is sufficient evidence that the defendant believed he was acting in self-defense, but that belief is objectively unreasonable." *People v. Jeffries*, 164 Ill. 2d 104, 113 (1995).

¶ 40 Defendant argues that he proved an actual, although unreasonable, belief in self-defense where he gave "uncontroverted" testimony that the GDs were violent and carried guns, the GDs issued an SOS order on him so he feared for his life, and Lewis had something that looked like a gun in his hands at the time defendant shot him. Although his testimony was uncontroverted, the fact finder "is not compelled to believe defendant's version of the events surrounding the homicide even if uncontradicted." *People v. Martin*, 271 Ill. App. 3d 346, 352 (1995). Defendant's credibility is still a factor for the fact finder to determine, and they may reject or accept all or part of a defendant's testimony. *People v. Luckett*, 339 Ill. App. 3d 93, 103 (2003). A reviewing court will not "substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses." *People v. Jackson*, 232 Ill. 2d 246, 280 (2009).

¶ 41 The trial court below did not find defendant's version of the events credible. It called the shooting "a very specific attack." The court found that "there is absolutely no evidence that this act was committed in self-defense, defense of another, [or] it was based on anything of record that would have justified in any manner whatsoever the very troubling murder of Mr. Lewis." In

denying defendant's posttrial motion, the trial court again reviewed "the totality of the evidence heard during trial," and the parties' posttrial arguments and found defendant's testimony that he acted in defense of himself or others "ridiculous." The court further found no credible evidence that defendant was "operating under any legitimate or any stretch of the imagination theory of having to act in the manner in which he did which caused" Lewis's death, and concluded that "[i]f there is ever a first degree murder case, this is a first degree murder case ***." The trial court clearly found that defendant did not shoot Lewis based on an actual belief in self-defense.

¶ 42 The evidence at trial and witness statements support the court's conclusion that the shooting was a "specific attack" rather than self-defense. First, defendant could not have believed he was in danger of imminent death or great bodily harm by the GDs prior to the shooting because the GDs did not know defendant was nearby until he came from behind a building and shot at Lewis. Other than the general threat defendant testified to, nothing in the record indicates the group was looking for defendant or acting in a violent manner prior to the shooting. Defendant acknowledged that he could have walked away and gone elsewhere.

¶ 43 Furthermore, defendant testified that when he first appeared before the group with his gun he only wanted to scare them because they were walking toward his family home. He then shot at Lewis because he thought he saw a gun in his hand. No witnesses, however, testified that Lewis had a gun on him that night. Detective DeCicco stated that he did not find anything in the course of his investigation that would lead him to believe Lewis had a gun or that someone pointed a gun at defendant prior to defendant firing shots. Witness testimony and statements also belie defendant's claim that he acted out of fear of Lewis. Pulley testified that when the shooter ran up to the group Lewis tried to run away but the shooter chased Lewis while firing at him. Brock told police and gave a statement that when the shooter ran up behind the group, Lewis

tried to run but the shooter chased him and shot him. Defendant even acknowledged that after he shot Lewis, Lewis ran away and he continued to shoot at Lewis as he chased him. Footage from the surveillance video corroborates this sequence of events.

¶ 44 Even if defendant feared imminent death or great bodily harm to himself because he saw an object in Lewis's hand, once defendant shot at Lewis and Lewis started to run away, defendant could not have believed he still faced danger from Lewis. Assuming Lewis was unarmed, "for self-defense to be justified, it must appear that the aggressor is capable of inflicting serious bodily harm without the use of a deadly weapon, and is intending to do so." *People v. Hawkins*, 296 Ill. App. 3d 830, 837 (1998). No one testified that Lewis lunged at defendant or threatened him in any way. Yet defendant chased after and continued to shoot at Lewis, who suffered multiple gunshot wounds that resulted in his death.

¶ 45 The cases defendant cites as support, *Hawkins* and *People v Ellis*, 107 Ill. App. 3d 603 (1982), are distinguishable. In *Ellis*, the defendant told police that there was an argument and the decedent lunged at him before he shot him. *Ellis*, 107 Ill. App. 3d at 606-07. A witness who lived in the apartment below the defendant testified that she heard noises like a "scuffle" or "moving about" at the time of the shooting. *Id*. at 605-06. This court found that "[t]he defendant's version of the circumstances of the shooting was not improbable nor was it impeached by the State's evidence." *Ellis*, 107 Ill. App. 3d at 611. In *Hawkins*, the defendant testified that the decedent was the aggressor who punched him and threw a brick at him because defendant owed him money. *Hawkins*, 296 Ill. App. 3d at 834. The evidence in *Ellis* and *Hawkins* supported the defendants' claims that they acted in self-defense. The evidence here does not support such a claim where Lewis was not the aggressor nor did he lunge at defendant.

¶ 46 Viewing the evidence in the light most favorable to the State, we find that any rational trier of fact could have found that the mitigating factor of imperfect self-defense was not present. *Blackwell*, 171 Ill. 2d 338, 358 (1996). As such, we affirm defendant's conviction of first degree murder.

¶ 47 Defendant next argues that the trial court did not accurately recall the evidence in making its determination on his posttrial motion, and the prosecutor's "blatant misstatements of facts" added to the court's confusion. The trial court's failure to recall or consider evidence crucial to the defense in a bench trial violates defendant's right to due process, and whether defendant's due process rights were denied is a question of law we review *de novo*. *People v. Williams*, 2013 IL App (1st) 111116, ¶ 75.

¶ 48 We note that defendant did not object to the prosecutor's "misstatements" that defendant was friends with the GDs, and he went to the area every day to hang around with them. Failure to object to the prosecutor's comments at trial forfeits the issue on appeal. *People v. Wheeler*, 226 Ill. 2d 92, 122 (2007). In any event, there is no indication the trial court failed to recall or misunderstood crucial evidence at trial. At the hearing on the posttrial motion, defense counsel reminded the court of defendant's testimony that: (1) he only went to the area to visit his pregnant girlfriend; (2) Brock and James wanted the drugs, money and weapons back, and Brock threatened defendant when he could not return those items; (3) defendant knew an SOS had been issued on him and believed there was "no way out;" (4) defendant wanted to scare the GDs in light of these threats; and (5) defendant knew the GDs were armed and he shot at Lewis because there was a flashing object in his hand. Thus, defense counsel was able to present, for a second time, the crucial evidence supporting defendant's theory of the case. After hearing the parties' arguments, the trial court stated that it considered "the totality of the evidence heard during trial"

and the posttrial arguments. Where the record does not affirmatively show that the fact finder was mistaken, we presume the trial court considered only competent evidence in reaching a verdict. *People v. Gilbert*, 68 Ill. 2d 252, 258-9 (1977).

¶ 49 Defendant also contends his trial counsel provided ineffective assistance. To prove ineffective assistance of counsel, defendant must show (1) counsel's performance fell below an objective standard of reasonableness; and (2) he was prejudiced by his counsel's conduct. *People v. Albanese*, 104 Ill. 2d 504, 525 (1984). Matters of trial strategy are generally immune from ineffective assistance of counsel claims (*People v. Guest*, 166 Ill. 2d 381, 394 (1995)), and a strong presumption exists that counsel's conduct falls within the wide range of reasonable assistance. *People v. Johnson*, 128 Ill. 2d 253, 266 (1989). Furthermore, defendant is entitled to reasonable, not perfect, representation. *People v. Fuller*, 205 Ill. 2d 308, 331 (2002). "Mistakes in trial strategy or tactics or in judgment do not of themselves render the representation incompetent." (Internal quotation marks omitted.) *People v. Hillenbrand*, 121 Ill. 2d 537, 548 (1988). Defendant may overcome the strong presumption of reasonable assistance if counsel's conduct is so irrational "that no reasonably effective defense attorney, facing similar circumstances, would pursue such a strategy." *People v. King*, 316 Ill. App. 3d 901, 916 (2000).

¶ 50 Defendant argues his trial counsel was ineffective because he conceded that defendant faced no imminent threat and defendant's belief in the need to use force was unreasonable, and counsel agreed with the trial court that defendant's decision to shoot at only one GD without taking out the whole group did not make sense. Defense counsel made these and similar comments in response to questioning by the trial court. In considering ineffective assistance of counsel claims, however, we review counsel's conduct "under the totality of the circumstances of each individual case." *People v. Shatner*, 174 Ill. 2d 133, 147 (1996).

¶ 51 Here, contrary to defendant's claim that his counsel essentially conceded his guilt, the record shows counsel consistently argued defendant's actual belief in the need for self-defense. In his closing argument, defense counsel described the world of Cabrini Green, "an infamous place known for its criminal activity" and emphasized that defendant grew up "amidst the gangs, amidst violence, amidst all the guns." He argued that the GDs controlled the block, putting out SOS orders and terrorizing people. He pointed out defendant's testimony that he "had just been threatened by an aggressive Dontae Brock and James Bryant" and believed "he had no way out." Counsel argued "it's clear though, whether reasonably or not, that [defendant] had a belief that he should fear for his safety and fear for the safety of his family – for his family's safety. He feared it right then and there and he felt, whether reasonable or not, that that threat to him and his family was imminent." This strategy was a sound one because if the trial court agreed defendant was acting in self-defense and deemed the belief reasonable, defendant's actions could be justified as self-defense. Alternatively, if his belief was unreasonable second degree murder could apply. Even the trial court acknowledged defense counsel's strong advocacy for defendant, finding both sides made "very good arguments" and "that defense counsel did a gallant job in attempting to fashion something, and it just didn't work because it was not there."

¶ 52 Defendant, however, cites *People v. Chandler*, 129 Ill. 2d 233 (1989) as support that his counsel was ineffective. *Chandler* is distinguishable because counsel therein "mistakenly believed that the jury could find defendant not guilty of murder if they believed that he had not inflicted the fatal wounds to the victim." *Id*. at 247. Therefore, he had conceded defendant's guilt of a felony, but the jury was instructed on both felony murder and accountability leaving them no choice but to find defendant guilty. *Id*. Here, defense counsel argued throughout trial defendant's belief he was acting in self-defense and never conceded otherwise. "[T]he fact that [counsel's]

strategy was ultimately unsuccessful is not a sufficient reason to deem his representation ineffective." *People v. Skillom*, 361 Ill. App. 3d 901, 913-14 (2005).

¶ 53 Furthermore, the evidence supporting defendant's guilt was overwhelming in light of the surveillance video footage, which was corroborated by Pulley's testimony and Brock and James' statements to police. The video showed defendant running from behind a building to a group of people who were not threatening him or acting aggressively, shooting at Lewis who was unarmed and who tried to run away, and then chasing Lewis while continuing to shoot at him. Even if defense counsel had provided substandard representation as defendant claims, he was not prejudiced by counsel's conduct given the overwhelming evidence against him. *People v. Ward*, 187 Ill. 2d 249, 263 (1999).

¶ 54 Defendant's next contends he is entitled to a new sentencing hearing because the trial court's comments showed it relied on improper factors in sentencing him. Defendant did not object to the trial court's comments during the sentencing hearing and thus has forfeited review of his claim. In order "to preserve a claim of sentencing error, both a contemporaneous objection and a written postsentencing motion raising the issue are required." *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Furthermore, the plain-error doctrine does not apply because no clear or obvious error occurred. See *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 55 The trial court below sentenced defendant to 50 years' imprisonment, where the sentencing range for first-degree murder when defendant personally discharged a firearm proximately causing death is 45 years to life. See 730 ILCS 5/5-4.5-20(a); 720 ILCS 5/9-1.2(d)(4) (West 2016). A sentence within the statutory range is presumed proper, unless it is "greatly at variance with the purpose and spirit of the law or manifestly disproportionate to the nature of the offense." *People v. Fern*, 189 Ill. 2d 48, 54 (1999).

¶ 56 We also give deference to the trial court's sentencing determination since the court, "having observed the defendant and the proceedings, is better suited to consider sentencing factors." *People v. Decatur*, 2015 IL App (1st) 130231, ¶12. At the sentencing hearing, the trial court remarked on the violent and senseless nature of defendant's intentional act, and the fact that he committed this act upon someone he knew but did not seem remorseful. Although the court mentioned defendant's participation "in criminal activities that street gangs are known for" and relationships that "don't reflect a degree of commitment other than the production of a child that the rest of us have to pay for," it explicitly stated it would "not use that against the Defendant." Even if the court considered an improper aggravating factor, however, defendant's sentence will not be overturned if the weight placed on that factor "was so insignificant that it did not lead to a greater sentence." *People v. Martin*, 119 Ill. 2d 453, 458 (1988). There is no indication that reliance on improper factors led to a greater sentence for defendant. In fact, the record indicates that while the trial court viewed the shooting as a planned, cold-blooded execution of Lewis, it gave weight to the mitigating factors of defendant's age and his "lack of a prior background" because it sentenced defendant to a term only five years above the minimum he could have received. We find no abuse of discretion here.

¶ 57 Defendant's final contention is that we should remand the cause for a preliminary inquiry into his posttrial allegations of ineffective assistance of counsel where the trial court failed to inquire into the factual basis of his claim as required by *People v. Krankel*, 102 Ill. 2d 181, 189 (1984). The general rule pursuant to *Krankel* is "when a defendant presents a *pro se* posttrial claim of ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim. If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se*

motion. However, if the allegations show possible neglect of the case, new counsel should be appointed." *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003). When this issue is brought on appeal, a reviewing court considers "whether the trial court conducted an adequate inquiry into the defendant's *pro se* allegations of ineffective assistance of counsel." *Id*. at 78.

¶ 58 Defendant here did not file a *pro se* posttrial motion alleging ineffective assistance of counsel, nor did he ever claim his counsel was ineffective. At his sentencing hearing, defendant addressed the court and stated that he had his opinion on the case. When asked by the trial court of his opinion, defendant answered, "I feel like a lot of things weren't really brought out the way it should have been, and a lot of evidence I felt proved what I was trying to go for, but a lot of stuff didn't get brought out the right way is what I am trying to say." The trial court responded, "So, you are critical of your attorney?" Defendant answered, "No, he did an excellent job, but I felt like he could have did [*sic*] a little bit better about presenting it a little bit and explaining certain things, but he did an excellent job." Defendant did not claim his representation was inadequate; rather, he found that his attorney "did an excellent job."

¶ 59 Furthermore, when the trial court gave defendant the opportunity to explain himself, defendant stated only that counsel could have done "a little bit better" in presenting and explaining the evidence. Even if we interpret defendant's statements as alleging ineffective assistance of counsel, no *Krankel* inquiry is mandated where the allegations are merely conclusory on their face and defendant provides no detail when afforded the opportunity. *People v. Bolton*, 382 Ill. App. 3d 714, 720 (2008).

¶ 60 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 61 Affirmed.