2018 IL App (1st) 160642-U

No. 1-16-0642

Order filed August 8, 2018.

Third Division

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. 14 CR 19170
	)	
KHALIE EARLY,	)	The Honorable
	)	Vincent M. Gaughan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Cobbs and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's questions to the potential jurors did not comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). However, defendant's claim is forfeited because, under the plain error doctrine, the evidence was not closely balanced. Defendant's sentence is affirmed over his contention that it violated the United States and Illinois constitutions. We order correction of the mittimus to reflect that defendant must serve only one mandatory supervised release term.

¶ 2 Following a jury trial, defendant Khalie Early was convicted of first degree murder (720 ILCS 5/9-1(a)(1) (West 2014)) and aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1)

(West 2014)). He was sentenced to consecutive prison terms: 45 years for first degree murder, which included a 25-year enhancement for personally discharging a firearm, and 6 years for aggravated battery with a firearm. On appeal, defendant contends that (1) the court failed to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) because it did not ask potential jurors whether they understood and accepted the principle that he had a right not to present evidence, (2) his 51-year sentence was a *de facto* life sentence and violated the United States and Illinois constitutions and (3) we should vacate the mandatory supervised release (MSR) term imposed on the aggravated battery with a firearm conviction because the court improperly sentenced him to two consecutive MSR terms. We affirm and order modification of the mittimus.

¶ 3 Defendant's convictions arose out of a shooting incident that killed Miguel Hernandez when he was smoking a cigarette on his front porch and injured Briana Johnson when she was walking home from her mother's house.[1]

¶ 4 During the *voir dire* examination, the court initially admonished the potential jurors that a defendant is presumed to be innocent of the charges against him, the State has the burden of proving a defendant guilty beyond a reasonable doubt, and a defendant is not required to prove his innocence or present any evidence on his behalf. The court then repeated some of these principles. It stated that defendant had a presumption of innocence and then asked the jurors if anybody had any problems understanding or applying this constitutional principle. The court stated that the burden of proof was beyond a reasonable doubt and the State always had the burden of proof throughout every stage of the trial. It asked the jurors whether anybody had any

[1] Miguel Hernandez shares the same last name of two witnesses. We will therefore refer to him and the witnesses by their first names.

problems understanding or applying these concepts. The court stated that defendant had a constitutional right to testify on his own behalf and, if defendant decided to testify, the jurors had to judge his credibility like any other witness. It asked if anybody had any problems understanding this constitutional principle. The court admonished the jurors that defendant had a constitutional right not to testify and, if defendant decided not to testify, no inference could be drawn from his silence. It asked if anybody had any problems understanding or applying this constitutional principle.

¶ 5 At trial, Andres Sandoval, Miguel's best friend, testified that, on September 28, 2014, he lived with Miguel on the 8500 block of South Escanaba, a residential area with houses lining both sides of the street. At about 11 p.m., Miguel went outside to his front porch to smoke a cigarette with a neighbor. Sandoval stayed inside and, about three minutes later, he heard multiple gunshots. Sandoval looked out of the window and saw a stream of blood coming from Miguel, who was unconscious and lying on the front porch. Guadalupe Hernandez, Miguel's brother, testified that, on September 28, 2014, at about 9:30 p.m., he left Miguel's home and went to his home across the street. About one and one-half hours later, he heard a gunshot. He went outside and saw Miguel lying on Miguel's front porch.

¶ 6 Briana Johnson testified that, on September 28, 2014, she was at her mother's house, also on the 8500 block of South Escanaba. At some point, she started walking home on Escanaba with her boyfriend. As she was walking, she heard "stuff flying" past her ears, which flew by her about four or five times. When she turned around, something hit her leg. Her leg burned and, after her boyfriend carried her to the grass, she learned she had been shot in her leg. Johnson was

treated at a hospital for a damaged blood artery and broken bone. The bullet could not be removed from Johnson's leg at that time.

¶ 7 Chicago police detective Danielle Deering testified that, on September 28, 2014, at about 11 p.m., she heard gunshots and went to the area of 86th Street and Exchange Avenue. When Deering arrived, she was given a description of the offender and directed eastbound towards Exchange. Deering looked in that direction and saw an individual wearing a gray hoodie coming from Exchange. Deering stopped the individual, who she identified in court as defendant. Deering searched the area where she detained defendant and, about one-half of a block away, she found a handgun on the ground by a fence. The gun was kept in that location until an evidence technician came to recover it.

¶ 8 Arturo Hernandez, Miguel's cousin, testified that, on September 28, 2014, he lived on South Escanaba. Arturo had a video surveillance system and a camera mounted on the garage facing the alley that separated his house from Exchange. On September 28, 2014, at about 11 p.m., after hearing gunshots, a detective came to his house and recorded the security camera footage that was taken from his system. The State published the security camera footage and the court admitted it into evidence. Arturo testified that the video footage showed the alley behind his house and the person in the video was running towards the third house.

¶ 9 Chicago police detective Thomas Dineen testified that, after the shooting, he met with defendant at the police station. After Dineen advised defendant of his rights, defendant agreed to speak and Dineen and various detectives interviewed defendant. The State published, and the court admitted into evidence, portions of the interviews that were recorded on videotape.

¶ 10 In the videotaped recording, Dineen reads defendant the *Miranda* warnings and defendant acknowledges he understands his rights and wants to talk to the officers. Defendant states he walked from Exchange to Escanaba, crossed 86th Street to Escanaba, looked down the block and saw two men on the west side of the street, one with a white shirt and the other with a black hoodie. He states the people were far enough away that he knew he was not going to hit them. He fired the gun on the corner of 86th and Escanaba and shot three times up towards the trees. He states he was shooting in the air and angled the gun up. During the interview, defendant stands up and demonstrates how he shot the gun. The video shows him pointing his arm forward and up at a slight angle and defendant states he angled the gun up. Defendant states he shot the gun because earlier in the day, "they" had shot someone whom he was close to and he was trying to scare them. He states he paid someone $250 to be a look out and he chose that specific block on Escanaba because it was the first people he saw and was going to scare them. Defendant states he did not see a "little girl" on the block and did not know he had shot her.

¶ 11 Brian Smith, a forensic investigator, testified that he recovered four shell casings on the southwest corner of 86th and Escanaba. He recovered a fired bullet in the street next door to where Miguel was found. He recovered a .32 caliber semi-automatic pistol on the ground in the gangway that led to the alley next to Exchange. Smith inventoried the recovered gun pursuant to Chicago police department procedures. Smith testified about various photographs showing the area of the shooting. One photograph showed an overhead view of Exchange, Escanaba, and the 8500 and 8600 blocks and he testified it accurately depicted how the houses and the streets were laid out. On cross-examination, Smith testified that the shell casings were found about 100 to

120 feet away from Miguel and there were several houses between Miguel and where the casings were found.

¶ 12 Kellen Lee Hunter, a firearm examiner who specialized in firearms identification, testified that the five cartridge casings and two fired bullets she received and tested in this case had been fired from the recovered firearm. Chicago police detective Donald Hill testified that, on September 29, 2014, at about 1 a.m., he was present when his partner administered a gunshot residue test on defendant. Mary Wong, an expert in the area of forensic trace chemistry, testified that she analyzed defendant's gunshot residue evidence collection kit. Wong concluded that defendant's right hand was either in the vicinity of the discharged firearm, came in contact with a primer gunshot residue related item, or he discharged a firearm with his right hand.

¶ 13 Ben Soriano, an expert in forensic pathology, performed an autopsy on Miguel and testified that Miguel had a gunshot wound that entered his head in the temple area. Soriano recovered a bullet from Miguel's head. Soriano did not find any evidence of close range firing. It was Soriano's opinion within a reasonable degree of medical certainty that the manner of Miguel's death was homicide.

¶ 14 In closing argument, defense counsel argued that the State did not prove that defendant had the requisite knowledge or intent to be convicted of first degree murder or aggravated battery. The jury found defendant guilty of first degree murder and that, during the commission of the offense, he personally discharged a firearm that proximately caused the death of another individual. The jury also found defendant guilty of aggravated battery with a firearm in that he knowingly discharged a firearm that caused injury to Johnson. The court denied defendant's motion for a new trial, merged the knowing first degree murder count into the intentional first

degree murder count, and sentenced him to consecutive prison terms: 45 years for first degree murder, which included 25 years for the firearm enhancement, and 6 years for aggravated battery with a firearm.

¶ 15 On appeal, defendant first contends that the trial court failed to comply with Rule 431(b) because it did not ask the potential jurors whether they understood and accepted that he had the right not to present evidence. Defendant acknowledges he did not preserve his challenge by objecting at trial and raising the issue in a posttrial motion. See *People v. Thompson*, 238 Ill. 2d 598, 611 (2010) (To preserve a claim for review, a defendant must object at trial and raise the issue in a written posttrial motion). He nevertheless argues that we may review the issue under the plain error doctrine.

¶ 16 Under the plain error doctrine, we may review unpreserved error when there was a clear or obvious error and (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). However, when a defendant does not present evidence that a Rule 431(b) violation produced a biased jury, we may only review the error under the first prong, as the second prong does not provide a basis for us to review the error. *People v. Wilmington*, 2013 IL 112938, ¶ 33 (discussing *Thompson*, 238 Ill. 2d at 615). Here, defendant argues the evidence was closely balanced under the first prong and does not contend that he presented evidence that the Rule 431(b) violation produced a biased jury. It is defendant's burden to show that the evidence is closely balanced. *Piatkowski*, 225 Ill. 2d at 567.

Before we apply the plain error doctrine, we must first determine whether any error occurred at all. *People v. Sebby*, 2017 IL 119445, ¶ 49.

¶ 17 Under Rule 431(b), during the *voir dire* examination, the trial court must ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles:

> "(1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that if a defendant does not testify it cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's decision not to testify when the defendant objects." Ill. S. Ct. R. 341(b) (eff. July 1, 2012).

The trial court is required to ask each potential juror whether he or she understands and accepts each of the principles in the rule. *Thompson*, 238 Ill. 2d at 607.

¶ 18 Defendant contends, and the State does not dispute, that the trial court failed to ask the potential jurors whether they understood and accepted the third principle of Rule 431(b), *i.e.*, that defendant was not required to present any evidence on his behalf. From our review, we agree that the trial court did not comply with Rule 431(b). Although the court admonished the potential jurors that a defendant was not required to present any evidence on his behalf, it did not ask them whether they understood and accepted this principle. Thus, the court did not sufficiently comply with Rule 431(b). See *Thompson*, 238 Ill. 2d at 607 (holding a trial court errs when it fails to ask jurors if they understand the four principles set forth in the rule).

¶ 19 Defendant contends we may review the unpreserved error under the plain error doctrine because, under the first prong, the evidence was so closely balanced that the court's failure to comply with Rule 431(b) "tipped the scales of justice" against him. The State asserts that defendant forfeited the error because the evidence was not closely balanced.

¶ 20 To determine whether the evidence presented at trial was close, we must review the totality of the evidence and conduct a qualitative, commonsense assessment of it within the context of the case. *Sebby*, 2017 IL 119445, ¶ 53. Our analysis involves an assessment of the evidence on the elements of the charged offense, along with any evidence regarding the credibility of the witnesses. *Id.*

¶ 21 Defendant was charged with intentional and knowing first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2014). To prove defendant guilty of first degree murder, as charged here, the State had to prove that defendant killed another person without lawful justification and, in performing the acts which caused the death, he either intended to kill or do great bodily harm to that individual or another, or knew that such acts would cause death to that individual or another, or knew that such acts created a strong probability of death or great bodily harm to that individual or another. *Id.*

¶ 22 Here, the evidence at trial established that defendant shot the gun that caused the death of Miguel. Defendant does not argue that the evidence regarding these elements was closely balanced. Rather, he argues that the evidence was closely balanced with respect to whether he had the requisite mental state to be convicted of first degree murder. We note that defendant does not argue that the evidence with respect to his conviction for aggravated battery with a firearm

was closely balanced. However, even assuming that defendant meant to encompass the aggravated battery conviction in his argument, our result would be the same.

¶ 23 Under the Criminal Code of 2012, a person intends, or acts intentionally or with intent, to accomplish a result or engage in conduct described by the statute defining the offense, when his conscious objective or purpose is to accomplish that result or engage in that conduct. 720 ILCS 5/4-4 (West 2014). Further, a person knows, or acts knowingly with knowledge of the result of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that that result is practically certain to be caused by his conduct. 720 ILCS 5/4-5(b) (West 2014). The factual conclusion regarding whether a defendant acted knowingly or with intent may be inferred from the circumstances surrounding the incident, defendant's conduct, and the nature and severity of the victim's injuries. *People v. Kibayasi*, 2013 IL App (1st) 112291, ¶ 42.

¶ 24 Here, we find that the evidence overwhelmingly shows that, when defendant shot the gun that caused Miguel's death, he intended to kill or do great bodily harm to another or knew that the act would cause death to another. The evidence at trial established that, at 11 p.m., defendant shot a gun five times down a residential street lined with houses. As a result, one victim, who was smoking a cigarette on his front porch, was shot and killed and another victim, who was walking home with her boyfriend, was shot in her leg. This evidence supports that defendant had intent to kill or do great bodily harm to another and was consciously aware that his actions were practically certain to result in death to another person. See *People v. Garcia*, 407 Ill. App. 3d 195, 201 (2011) ("intent to kill can be inferred from the act of firing two bullets in the direction of an occupied car and a crowded street"); see *People v. Bailey*, 265 Ill. App. 3d 262, 273 (1994)

(the defendant's "conduct in shooting down a breezeway in which several people were running is sufficient evidence to prove a specific intent to kill beyond a reasonable doubt").

¶ 25 Further, this evidence supporting that defendant had the requisite mental state for first degree murder was corroborated by defendant's statement to the police after the shooting. Defendant stated he went to the area and shot the gun because he wanted to scare people who had shot someone whom he was close to earlier that day and he chose that specific block because it was where he saw the first people. He also stated he paid someone $250 to be a lookout and, before he shot the gun, he saw two men on the block. Accordingly, defendant's statement corroborates the evidence showing that he had intent to kill or do great bodily harm when he shot the gun down the residential block knowing that there were at least two people on the street. See *People v. Smith*, 258 Ill. App. 3d 1003, 1027 (1994) ("intent to murder can be inferred from the act of firing a gun at a person because the natural tendency of such an act is to destroy another's life").

¶ 26 Defendant asserts that his statement to the police showed that he did not intend to kill or do great bodily harm, as he told the police that he aimed upward and shot at the trees and did not think he was close enough to the two people he saw on the block to hit them. However, the trier of fact, the jury here, is not obligated to accept or reject all of defendant's statement but may "weigh the veracity of each portion of a statement." *People v. Fuller*, 91 Ill. App. 3d 922, 930 (1980); see also See *Garcia*, 407 Ill. App. 3d at 200-02 (where the defendant argued on appeal that his testimony established that he fired up and away from a car and did not intend to kill or injure anyone in the car, the court noted that the death of the victim who was driving perpendicular behind the car could support the conclusion that the defendant did not fire up and

away from the car). Thus, we cannot find that defendant's statement that he shot towards the trees and did not intend to hurt anyone demonstrates that the evidence was closely balanced.

¶ 27 Accordingly, a common sense analysis of the evidence demonstrates that the evidence to support defendant's first degree murder conviction is not closely balanced. Defendant has not met his burden of showing that the evidence is closely balanced. Thus, even though the trial court erred when it did not properly admonish the potential jurors under Rule 431(b), defendant's forfeiture of this issue is not excused under the first prong of the plain error doctrine.

¶ 28 Defendant next contends that his 51-year sentence is a *de facto* life sentence and unconstitutional under the United States and Illinois constitutions. Defendant argues the trial court was forced to sentence him to a mandatory term of 51 years in prison without first considering his young age of 20 years old or other mitigating factors that would allow him to reenter the community and become a useful citizen.

¶ 29 We conclude that defendant has not established that his sentence is unconstitutional under either the eighth amendment to the United States Constitution or the proportionate penalties clause to the Illinois Constitution (Ill. Const., 1970 art. I, § 11). The court sentenced defendant to a total of 51 years in prison: 20 years for first degree murder, which has a sentencing range of 20 to 60 years (730 ILCS 5/5-4.5-20(a) (West 2014)), 25 years for the firearm enhancement (730 ILCS 5/5-8-1(d)(iii) (West 2014)), and 6 years for aggravated battery with a firearm, which has a sentencing range of 6 to 30 years (720 ILCS 5/12-3.05(h) (West 2014); 730 ILCS 5/5-4.5-25(a) (West 2014)).

¶ 30 Defendant asserts his sentence violates the eighth amendment to the United States Constitution because the court did not have discretion when it imposed the sentence and could

not consider his youth, lack of adult criminal history, drug addiction, or the impulsiveness of the offense when sentencing him.

¶ 31 In *Roper v. Simmons*, 543 U.S. 551, 574 (2005), the United States Supreme Court concluded that the death penalty could not be imposed on juveniles who were under the age of 18 at the time of the offense. Later, in *Miller v. Alabama*, 567 U.S. 460, 479 (2012), the United States Supreme Court held that a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders is unconstitutional. Subsequently, our supreme court has held that when a juvenile is sentenced to a mandatory term of years that is the functional equivalent of life without the possibility of parole, it constitutes cruel and unusual punishment and violates the eighth amendment. *People v. Reyes*, 2016 IL 119271, ¶ 10 (finding a statutorily mandated sentence of 97 years in prison for a juvenile defendant who was 16 years old at the time of offense was a *de facto* life sentence without parole and unconstitutional under *Miller*).

¶ 32 We recognize that defendant was only 20 years old at the time of the offense. However, defendant was over the age of 18 and not a juvenile and, therefore, his 51-year sentence did not violate the eighth amendment to the United States Constitution. See *People v. Pittman*, 2018 IL App (1st) 152030, ¶ 31 (concluding that "*Miller* protections under the eighth amendment are not implicated in cases of adult offenders"); *People v. Harris*, 2016 IL App (1st) 141744, ¶ 56 (finding that eighth amendment did not protect the 18-year-old defendant from what is effectively a life sentence, noting that the United States Supreme Court "drew a line between juveniles and adults at the age of 18 years").

¶ 33 Defendant next argues that his sentence violated the proportionate penalties clause of the Illinois Constitution because the trial court could not consider his rehabilitative potential when it

sentenced him. The proportionate penalties clause states that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11; see also *Pittman*, 2018 IL App (1st) 152030, ¶ 33. Under this provision, "a sentence may be deemed 'unconstitutionally disproportionate if *** the punishment for the offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community.' " *People v. Perez*, 2018 IL App (1st) 153629, ¶ 40 (quoting *People v. Miller*, 202 Ill. 2d 328, 338 (2002)). When we review whether a sentence shocks the moral sense of the community, we consider objective evidence as well as the community's changing standard of moral decency. *People v. Hernandez*, 382 Ill. App. 3d 726, 727 (2008).

¶ 34 Defendant asserts that his sentence shocked the moral sense of the community because he was sentenced for an offense he committed when he was 20 years old, grew up without a father, graduated high school, had minimal criminal history, and was battling drug addiction. While we acknowledge these mitigating factors, defendant was a legal adult when he decided to shoot a gun five times down a residential street knowing that at least two people were on the street, which resulted in killing one victim who was on his front porch and injuring another victim who was walking home. Given the serious nature of this conduct, we cannot conclude that defendant's mandatory minimum sentence of 51 years shocks the moral sense of the community. See *Pittman*, 2018 IL App (1st) 152030, ¶ 40 (finding that the defendant's sentence of natural life in prison for an offense that he committed when he was 18 years old did not violate the proportionate penalties clause, noting that he was a legal adult when he committed the first degree murders and given the violent and serious nature of the murders, his sentence did not

shock the moral sense of the community); see *People v. Ybarra*, 2016 IL App (1st) 142407, ¶ 30 (finding that the defendant's mandatory sentence of natural life for offenses committed when he was 20 years old did not shock the moral sense of the community or violate the proportionate penalties clause, noting that he was a legal adult who was convicted as the actual shooter in the deaths of three unarmed teenagers).

¶ 35 Further, the record shows the court considered the mitigating factors when it sentenced defendant to the minimum possible sentence. The court expressly stated that it read the presentence investigation report, which included information such as defendant's age and lack of criminal history as an adult. When the court imposed its sentence, it expressly stated that it reviewed the statutory and nonstatutory provisions in mitigation and "also the chance of rehabilitation." Thus, the court considered the mitigating factors and defendant's potential for rehabilitation when it imposed the mandatory minimum sentence of 51 years. See *People v. Thomas*, 2017 IL App (1st) 142557, ¶¶ 30, 48 (affirming the defendant's 80-year sentence, which included two mandatory firearm enhancements, for an offense committed when he was 18 years old, noting that the record established that the trial court considered his age and background when it imposed the shortest possible sentence). Further, defendant's mandatory minimum sentence included 25 years for a firearm enhancement and our supreme court has "determined that the legislature took into account rehabilitative potential when the firearm enhancements are applied." *Id.* ¶ 32. Thus, we are unpersuaded by defendant's argument that his sentence violated the proportionate penalties clause because the court could not consider his rehabilitative potential when it sentenced him.

¶ 36 To support defendant's position that his sentence violated the proportionate penalties clause, he relies upon *People v. Gipson*, 2015 IL App (1st) 122451, *People v. House*, 2015 IL App (1st) 110580, and *People v. Harris*, 2016 IL App (1st) 141744.

¶ 37 In *Gipson*, this court concluded that a sentence of 52 years in prison for the defendant who was 15 years old at the time of the offense and had a history of mental illness violated the proportionate penalties clause. *Gipson*, 2015 IL App (1st) 122451, ¶¶ 69, 74. In *House*, the 19-year-old defendant was convicted of two counts of aggravated kidnapping and two counts of first degree murder under a theory of accountability and sentenced to mandatory natural life. *House*, 2015 IL App (1st) 110580, ¶¶ 3, 82, 101. This court concluded that the non-juvenile 19-year-old's mandatory life sentence was unconstitutional, noting that recent research and articles discussing "the differences between young adults, like defendant, and a fully mature adult *** illustrate the need to expand juvenile sentencing provisions for young adult offenders." *Id.* ¶¶ 95-96, 101. Subsequently, in *Harris*, this court found that the 76-year sentence for the defendant, who turned 18 a few months before the offense, was a *de facto* life sentence. *Harris*, 2016 IL App (1st) 141744, ¶¶ 2, 54. Although it found that the sentence did not violate the eighth amendment because the defendant fell "on the adult side" of the line between juveniles and adults, it found that the sentence violated the proportionate penalties clause, concluding that it shocked the moral sense of the community to send the young adult to prison for the remainder of his life, with no chance to rehabilitate himself into a useful member of society. *Id.* ¶¶ 56-58, 69.

¶ 38 We find these cases distinguishable. Unlike *Gipson*, defendant was 20 years old and not a juvenile when he committed the offense and defendant does not claim that he had several mental health issues. See *Ybarra*, 2016 IL App (1st) 142407, ¶ 29 (affirming the sentence of natural life

in prison for the defendant, who was 20 years old at the time of the offense, finding *Gipson* distinguishable because the defendant in *Gipson* was a juvenile and had serious mental health issues). Further, contrary to *House*, defendant was sentenced to 51 years in prison, not a sentence of mandatory natural life. In addition, unlike *House*, where the defendant was convicted under an accountability theory, defendant actually pulled the trigger that killed one victim and injured another. See *Ybarra*, 2016 IL App (1st) 142407, ¶ 27 (finding *House* distinguishable, noting that the defendant in *House* "did not pull the trigger, but acted as a lookout and was found guilty under a theory of accountability").

¶ 39 Further, defendant's 51-year sentence is 25 years below the 76-year sentence imposed on the 18-year-old defendant in *Harris* that this court found violated the proportionate penalties clause and was a *de facto* life sentence. This court has recently found that a sentence of 53 years for a 17-year-old juvenile defendant was not a *de facto* life sentence and did not violate the proportionate penalties clause, noting that the defendant would be released at 70 years old, "which offers hope for some years of life outside prison walls." *People v. Perez*, 2018 IL App (1st) 153629, ¶¶ 38, 46. Thus, given that defendant committed the offense when he was 20 years old and not a juvenile, we cannot find that his sentence of 51 years is a *de facto* life sentence or that it shocks the moral sense of the community. Accordingly, we are unpersuaded by defendant's reliance on *Gipson*, *House*, and *Harris*.

¶ 40 Defendant finally contends, and the State correctly concedes, that the trial court improperly sentenced him to two consecutive MSR terms. He asserts we should vacate the MSR term that corresponds with the aggravated battery conviction and remand to the circuit court with

directions to amend the mittimus to reflect that defendant must serve only one three-year MSR term.

¶ 41 We agree with the parties that the court improperly imposed two consecutive MSR terms on his convictions. See *People v. Jackson*, 231 Ill. 2d 223, 227 (2008) ("when a defendant receives consecutive sentences for multiple felonies, these sentences are treated as a single term, and the defendant serves the MSR term corresponding to the most serious offense."). Thus, we vacate the MSR term imposed on the aggravating battery with a firearm conviction and order the clerk of the circuit court to correct the mittimus to reflect one MSR term for first degree murder, the most serious offense.

¶ 42 For the reasons explained above, we affirm the judgment of the circuit court and order correction of the mittimus to reflect one MSR term for first degree murder.

¶ 43 Affirmed; mittimus corrected.