2019 IL App (1st) 160333-U

No. 1-16-0333

Order filed December 20, 2019

Fifth 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. 12 CR 21059
	)	
FOUNTAINE KING,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: Defendant's conviction for first degree murder affirmed over his contention that the trial court erred when it denied his motion *in limine* to bar gang evidence. Pursuant to *People v. Buffer*, 2019 IL 122327, defendant's 48-year sentence is vacated, and the matter remanded for resentencing when defendant was 17 years old at the time of the offense and the trial court did not consider his youth and its attendant characteristics at sentencing.

¶ 2 Following a jury trial, defendant Fountaine "Binky" King was found guilty of first degree murder (720 ILCS 5/9-1(a)(1) (West 2010)), and sentenced to 48 years in prison. On appeal, he

contends that the trial court erred when it denied his motion *in limine* to exclude gang evidence, or, in the alternative, when the trial court denied his motion for a mistrial based upon the admission of gang evidence that had minimal probative value and serious prejudicial effect. Defendant next contends that his 48-year sentence should be vacated and the cause remanded for resentencing because he was a juvenile at the time of the offense and the sentence is a *de facto* life sentence in violation of *Miller v. Alabama*, 567 U.S. 460 (2012). Defendant finally contends that his mittimus must be corrected to reflect the proper amount of presentence custody credit. We affirm in part, vacate in part, and remand for resentencing.

¶ 3 Defendant was charged with two counts of first degree murder arising out of the July 5, 2010 shooting death of Shaundee Nance. Defendant, who was born on February 17, 1993, was 17 years old at the time of the offense. We set forth the proceedings and evidence relevant for understanding the issues on appeal.

¶ 4 On August 3, 2015, defendant filed a motion *in limine* to bar evidence of his gang association. The motion alleged that although defendant made a postarrest statement that he associated with the J-Town faction of the Gangster Disciples because he had family members who lived in "J-Town territory," he did not have a "personal alliance" with the gang.

¶ 5 At the hearing on the motion, the State argued that it sought to admit a "limited amount" of gang evidence, which would show that Nance was a member the "Crash Town" faction of the Gangster Disciples and that at the time of the shooting, Crash Town was in a dispute with "J-Town," the faction to which defendant belonged. The defense responded that defendant associated with J-Town because his family lived in that area, but that he had no "personal alliance" to J-Town. The court concluded that these were "questions of fact" for the jury, and

denied the motion. The court further stated that it would question the jury during *voir dire* regarding "any prejudice about the gang activity," since the State's theory was that the offense was a "gang-related [and] motivated type shooting."

¶ 6 During *voir dire*, the court stated, *inter alia*, that

> "in some context some evidence*** will come out at this trial about people involved in street gang activity. *** Nobody is accused of being involved in street gang activity. It may come up in some context involving some people. *** People have opinions about gangs and street gangs *** with that being said, just because there may be evidence that comes up in some context about some people involved in street gangs *** does that mean you're prejudiced before you even hear what the evidence is that you cannot give the Government a fair trial or cannot give [defendant] a fair trial just because there may be some evidence about that topic in some context? If you feel it prejudices you and you cannot give one side or the other a fair trial before you even hear the evidence, please raise your hand. No hands are raised."

¶ 7 During opening statements, the State argued that in July 2010, there was a conflict between factions of the Gangster Disciples and that Nance, who belonged to Crash Town, was killed when defendant, who belonged to J-Town, crossed Ashland Avenue into Crash Town territory and shot him. In its opening statement, the defense argued that the State's case rested on two convicted felons who were motivated by "fear and self-preservation," and that no forensic evidence connected defendant to the offense.

¶ 8 Deangelo Clayton, who at the time of trial had a narcotics possession case pending in juvenile court, testified that he knew Nance, and was on the block when Nance was shot. Clayton

heard gunshots and saw Nance hop on one leg out of a gangway, and then lie on the sidewalk. Clayton did not recall speaking to detectives, telling detectives that he saw a person chasing Nance into the gangway, or providing a description of the shooter. He did not recall describing the shooter as a dark-skinned person approximately five feet, seven inches to five feet, nine inches tall, wearing a white tank top and blue jeans, whose face was covered by a white shirt and who had a silver gun with an extended clip. During cross-examination, Clayton testified that he did not recall telling police that he saw the shooter exit the backseat of a gray vehicle or that the shooter was wearing blue jeans. During redirect, Clayton did not recall telling the police that the shooter initially wore a tank top but was then shirtless.

¶ 9 Chicago police officer Salvador Mondragon testified he responded to a call of a person shot, received a description of the shooter, and searched the neighborhood. He recovered a firearm with an extended clip that "looked like it was jammed" from under a sheet of plywood in a vacant lot. Mondragon saw other officers recover a bloodstained white t-shirt tied in a knot.

¶ 10 Chicago police officer Gerald Lau testified that he was familiar with the Englewood neighborhood, and that in July 2010, more than one faction of the Gangster Disciples was present. Ashland Avenue was the dividing line between the factions, with J-Town on the east side and Crash Town on the west side. Defendant associated with J-Town.

¶ 11 When Lau walked the crime scene, he saw part of a tank top, specifically the "shoulder area around the arm." When Lau relocated to the area of 69th Street and Justine Street, east of Ashland, he observed Cavette Maynie exiting a blue van. Lau spoke with Maynie and looked inside the van. Lau saw a ripped tank top on an arm rest in the middle row of the van. He also saw a pair of gym shoes. Lau determined that the van was a crime scene and arrested Maynie,

who said that the gym shoes were his. During cross-examination, Lau testified that the van drew his attention as it matched the description of a vehicle that was possibly connected to the shooting, and was approximately four blocks from the crime scene. When Lau saw a piece of a white tank top inside the van, he thought it could be related to the shooting. He saw a little bit of blood on the tank top in the van and on the shoes.

¶ 12 Maynie testified that he had a prior conviction for residential burglary and identified defendant as "Binky." He denied being in a gang and did not know defendant to be a member of a gang. Maynie was in court pursuant to a subpoena and testified before the grand jury on May 8, 2012. He did not remember telling the grand jury that he was a member of the Gangster Disciples or that defendant was a member of J-Town. Maynie remembered being arrested on July 5, 2010, but did not remember defendant approaching him with a ripped tank top, driving defendant around, or that defendant was sweating and out of breath. He did not remember talking to police officers following his arrest or stating that after defendant entered the van, defendant said that he chased a man who tried to wrestle him, and that the man tried to run away but defendant "was pop, pop" until the gun jammed.

¶ 13 Maynie did not remember testifying before the grand jury that after he parked his van, "Fat Shorty" and "Baby Kevin" approached him or that defendant was also present wearing a white tank top. Mayne also did not remember telling the grand jury that Baby Kevin asked to be taken to his grandmother's house or that defendant stated that he wanted to change clothes. He was not sure that he testified that defendant stated that defendant could not believe that " 'piss ant n*** tried to fight' " and that defendant grabbed " 'the gun, pow, pow, pow,' " and that the gun jammed after defendant fired.

¶ 14 At trial, Maynie further testified that he did not see defendant change clothes in the van and did not know that "anything" was in his van until he was arrested. He also testified that the police forced him to "say stuff" that he knew "nothing about." During cross-examination, Maynie acknowledged that he associated with J-Town. On July 5, 2010, he was arrested as he exited a blue van. He was released two days later. He did not know about the torn white tank top recovered from the van, but was later made aware of it.

¶ 15 Assistant State's Attorney (ASA) Jamie Santini testified that on May 8, 2012, he asked Maynie if he would be willing to testify before the grand jury and he said yes. Maynie stated that he had not been threatened and had been treated well by the police. Santini identified a transcript of Maynie's grand jury testimony, which was then admitted into evidence and published to the jury.

¶ 16 In his grand jury testimony, Maynie testified that on the evening of July 5, 2010, he was at 69th and Justine in Chicago, that this area was known as J-Town and belonged to the Gangster Disciples, and that he was a member of the J-Town faction. Maynie further testified that later that evening fellow gang member "Fat Shorty" asked for a ride. Defendant, who belonged to J-Town and was wearing a white shirt or tank top, was also present. The top appeared ripped around the neck and defendant was sweating. As Maynie walked to his van, defendant and "Baby Kevin" got in. At this point, defendant was wearing the white tank top around his neck. The group drove to Baby Kevin's grandmother's house so that defendant could change clothes. Baby Kevin and defendant sat in the back seat. Maynie heard defendant say that he could not believe that "piss ass n*** tried to fight" him, and he "grabbed the gun, pow, pow," but that the firearm "jammed." When they arrived, Baby Kevin retrieved a plastic grocery bag containing

clothing. Maynie drove back to the corner and the other three men left. When Maynie exited the van, police took him into custody and spoke to him about what he did on July 5, 2010. He initially lied to police because he did not have "anything to do with it," but he eventually told the police what happened.

¶ 17 Jamal Crawford testified that he was currently in jail for an armed robbery charge, and had previous felony convictions. Crawford was also known as "Fat Shorty."[1] Crawford belonged to the J-Town Gangster Disciples and remembered the dispute between J-Town and Crash Town. J-Town was on the east side of Ashland Avenue and Crash Town was on the west side. Defendant was a member of J-Town. Crawford was "not sure" of Nance's gang affiliation. On the afternoon of July 5, 2010, Crawford was on a porch with Maynie and others. He denied that defendant approached the porch while not wearing a shirt and discussed the shooting.

¶ 18 Crawford and defendant were arrested on July 15, 2010. An officer then told Crawford that he would be charged with a firearm crime and murder if he did not say what was happening between J-Town and Crash Town. Crawford "made up stuff" to tell the police. Specifically, Crawford told the police that the people on the porch told defendant that he had bloodstains on his pants, defendant stated that he just shot Nance after they tussled, that defendant chased Nance through a gangway, and that Nance tried to grab the firearm but defendant removed the safety and "got to shooting." Crawford further told detectives that defendant stated that he shot Nance in the leg, Nance fell, and he then shot Nance two more times. Crawford also told detectives that defendant described how he made a mask out of a shirt and used his own shirt to demonstrate. He finally told detectives that he, Maynie, defendant, and another man entered a blue van to get

[1] Crawford also went by Terrell Delaney, DeAntonio Delaney, Jessie Turnage, Jamael Crawford, and Edmund Harris.

defendant new pants, that defendant left the bloody pants in the van, and that the following day, defendant threw shoes on a roof. He gave detectives the address of that building.

¶ 19 Crawford acknowledged that on May 14, 2012, he testified before the grand jury that there was a dispute between J-Town and Crash Town, defendant was a member of J-Town, and Nance was a member of Crash Town. His grand jury testimony was consistent with his statement to the police, although he denied that either was true. He also told the grand jury that he saw defendant running down the street without a shirt and that when defendant approached the group, he was breathing fast and sweating. Defendant stated that he placed the firearm he used behind the Food for Less store. Crawford acknowledged that he told the police and the grand jury that although defendant tried to throw a shoe on a roof, defendant was unsuccessful and Crawford in fact threw both shoes on the roof. At trial, Crawford admitted that he did not tell the grand jury that he was threatened by the police or that the police paid him $500 to testify.

¶ 20 ASA Santini testified that when he spoke to Crawford on May 14, 2012, Crawford did not state that police officers gave him $500 to speak about the shooting or threatened to charge him with a "gun or murder case." Santini identified a transcript of Crawford's grand jury testimony, which was admitted into evidence and read to the jury. Before the grand jury, Crawford testified that while in custody, he approached officers and told them that he had information about Nance's death, and that defendant stated "I just killed that n***, Shaundee. I was tussling with that n***," and that he later identified defendant in a photographic array.

¶ 21 Chicago police officer Joseph Gentile testified on July 15, 2010, he observed a vehicle, determined it was stolen, and stopped it. Defendant and Crawford were in the car. Defendant

fled, but Gentile chased and caught him. Later, at a police station, Crawford indicated that he had information about Nance's death and Gentile contacted detectives.

¶ 22 Chicago police detective David Minelli testified that on July 15, 2010, he spoke with a person who identified himself as "DeAntonio Delaney" (Crawford) about Nance's death. Crawford provided the location of the roof where he had thrown the shoes defendant wore on the night of the shooting, and relayed specific "quotes" from defendant. Minelli later located the shoes on the roof, and they were recovered. He denied paying Crawford.

¶ 23 Chicago police sergeant Velma Guerrero testified that when she arrived at the crime scene, she observed shell casings and blood stains in a gangway as well as a piece of a white tank top at the rear of the gangway. She later learned that a bloody weapon, a "banana clip" which held extra bullets, and a knotted white t-shirt with red stains were recovered at another address, and that a white tank top was recovered from a van. Guerrero interviewed witnesses, including Clayton. Clayton described the shooter as a dark-skinned black man, approximately "five seven [or] five nine," with a white t-shirt on his face, wearing a white tank top and holding a silver gun with a long clip. Guerrero also spoke with Maynie. She also obtained and reviewed video footage from the Food 4 Less Store. After reviewing the footage, Guerrero became interested in a shirtless person holding something white who was walking through the Food 4 Less parking lot around 9:04 p.m.

¶ 24 In August 2010, a buccal swab was taken from defendant. Tests to the bloodstained jeans recovered from Maynie's van revealed that they bore defendant's DNA. Defendant was arrested in October 2012.

¶ 25 Evidence was admitted via stipulation that: (1) Nance's DNA was on the blood-stained tank top recovered; (2) Nance could not be excluded as a contributor to the DNA on the firearm recovered; (3) the DNA in the bloodstain on the t-shirt matched Nance's DNA profile, and did not match defendant's profile; and (4) a forensic scientist would testify that a blood-stained pair of pants recovered from the van had Nance's DNA on the outside and defendant's DNA on the waistband.

¶ 26 At the close of the State's case, the defense made a motion for a mistrial, arguing that the general gang evidence elicited at trial was not enough to show motive or why an otherwise inexplicable act may have occurred. The trial court denied the motion as there was "more" gang evidence than the fact that defendant and the victim were in different gang factions. The court noted that there was also testimony regarding "quarrels" and "some kind of war going on between them." The court concluded that there was not "anything prejudicial" about the gang evidence, as it "does put some context into this, at least the [State's] theory." The defense then moved for a directed verdict, which was denied. The defense rested without presenting evidence.

¶ 27 During closing argument, the State contended an intergang dispute about "nothing" was "serious business" and led to Nance's death. The State argued that Nance did not deserve to die merely because he was a member of Crash Town and defendant decided to cross the street, disguise himself, and "commit murder" due to a "silly beef" over "some jurisdictional" issues. In response, the defense argued that defendant was not the shooter and that if the jury were to accept the gang evidence, it should consider that Maynie and Crawford were in J-Town and threw defendant "under the bus" because he was "probably at the bottom of the totem pole." Maynie and Crawford blamed him when they "realized that their butts were on the line." The

defense concluded that rather than "tell the truth about the bigger fish," Maynie and Delaney decided to "throw in the little guy" because defendant was disposable.

¶ 28 Defendant was found guilty of first degree murder. The defense filed a motion for a new trial alleging, in pertinent part, that the trial court erred when it denied defendant's motion *in limine* to bar evidence of his gang association and when it denied the motion for a mistrial. The trial court denied the motion.

¶ 29 At sentencing, the State indicated that because of the applicable sentencing rage, *i.e.*, 45 years to life in prison, defendant's "fate was sealed" when the jury found him guilty, and that because Nance was "minding his own business" when he was shot, defendant should not receive the minimum sentence. The defense argued that the minimum sentence reflected the serious nature of the offense. The trial court noted that defendant had a "difficult" upbringing, but that "any first degree murder case involving a gun is tantamount to a life sentence," and sentenced defendant to 48 years in prison.

¶ 30 On appeal, defendant first contends that the trial court erred when it denied his motion *in limine* to bar evidence of his gang association. In the alternative, defendant contends that the trial court erred when it denied his motion for a mistrial when the gang evidence had minimal probative value and serious prejudicial effect.

¶ 31 Relevant evidence is "evidence having any tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." *People v. Gonzalez*, 142 Ill. 2d 481, 487-88 (1991). Our supreme court has held "any evidence which tends to show that an accused had a motive for killing the

deceased is relevant because it renders more probable that the accused did kill the deceased." *People v. Smith*, 141 Ill. 2d 40, 56 (1990).

¶ 32 Evidence that a defendant belongs to a gang must be admitted with care, because society regards gangs with "considerable disfavor." *People v. Morales*, 2012 IL App (1st) 101911, ¶ 40. While a defendant may not insulate the trier of fact from his gang membership when it is relevant to a determination of an issue in the case (*People v. Rivera*, 145 Ill. App. 3d 609, 618 (1986)), evidence of gang membership "is admissible only when there is sufficient proof that the membership is related to the crime charged" (*People v. Villarreal*, 198 Ill. 2d 209, 232 (2001)). If the State establishes a relationship between gang membership and an offense, it must also show that membership is "relevant to an issue in dispute" and "its probative value is not substantially outweighed by its prejudicial effect." *Id.* Gang evidence is often admitted to " 'provide a motive for an otherwise inexplicable act.' " *Id.* at 233 (quoting *Smith*, 141 Ill. 2d at 58).

¶ 33 The trial court has discretion to weigh the probative value and prejudicial effect of gang evidence to determine whether it should be admitted in any given case. *Gonzalez*, 142 Ill. 2d at 489. To ensure a careful exercise of discretion, a trial court should require the State to demonstrate a clear connection between the crime charged and the gang evidence. *People v. Roman*, 2013 IL App (1st) 110882, ¶ 25. A trial court should take great care when exercising its discretion to admit gang evidence (*id.* ¶ 24), and its evidentiary rulings regarding gang-related evidence are reviewed for an abuse of discretion (*Villarreal*, 198 Ill. 2d at 232).

¶ 34 Defendant argues that the gang evidence in this case had minimal probative value because despite evidence that J-Town and Crash Town were feuding, no evidence established the

cause of the feud, or whether defendant knew of either the dispute or Nance's gang membership. Defendant contends that the gang evidence in this case was merely "evidence of motive in the abstract" (*Smith*, 141 Ill. 2d at 57), that is, "evidence that some people, including potentially the defendant might have some unspecified reason to kill the victim," and served to either confuse the jury or "excite the common prejudice against street gangs."

¶ 35 The State responds that the trial court carefully balanced the probative value of defendant's gang membership against the potential prejudice and determined that the gang evidence provided context for the shooting and was relevant to the State's theory of the case. The State further contends that even if the trial court abused its discretion when admitting the gang evidence, the error was harmless when the State presented "overwhelming" evidence of defendant's guilt.

¶ 36 We agree with the State that evidence of defendant's gang membership, as well as evidence of the gang membership of Nance, Maynie, and Crawford, was relevant to provide a motive and context for the shooting. Here, the gang evidence admitted at trial established that in July 2010 the two gangs on either side of Ashland Avenue were in a dispute, that defendant and Nance belonged to rival gangs, and that defendant crossed the dividing line into another gang's territory and shot Nance. Defendant then went back to his gang's territory and told a group of people, including several self-identified members of his gang, what he had just done. Those fellow gang members helped defendant obtain fresh clothes and hide the clothes that he wore at the time of the shooting.

¶ 37 Although Crawford testified at trial that everything that he told the police was "made up," he acknowledged that he told the police that he belonged to the Gangster Disciples and that

defendant was a member of J-Town, that when defendant came to the porch the people there told him about the bloodstains on his clothes, and that defendant then stated that he had fought with, chased, and shot Nance. Crawford also told detectives that he threw the shoes that defendant was wearing at the time of the shooting onto a roof and gave the exact address from which those shoes were later recovered. Moreover, in Crawford's grand jury testimony, he identified Nance as a member of Crash Town. Maynie also testified before the grand jury that he belonged to J-Town, that fellow gang member Crawford asked for a ride, that defendant was also present wearing a white top, and that Maynie drove the group to another location so that defendant could obtain a fresh outfit.

¶ 38 Here, absent the evidence that Crash Town and J-Town were feuding, and that defendant and Nance were members of those feuding gangs, it would be impossible for the jury to understand why defendant would shoot Nance, let alone why defendant would walk up to a group while wearing bloodstained clothes and admit that he had just shot someone multiple times, or why Maynie and Crawford would help defendant to dispose of the bloodstained clothing and shoes. See *Smith*, 141 Ill. 2d at 56-57 (evidence that shows the defendant had a motive to commit the offense charged is relevant because it makes it more likely that the defendant did commit the offense). The fact that Crawford, Maynie, and defendant belonged to the same gang could also help the jury to understand why Crawford and Maynie would disavow their prior statements and grand jury testimony, and why Crawford would claim that he was paid to give information rather than admit that he volunteered the information about the shooting and the location of the shoes. As a result, we cannot find that the trial court abused its discretion

when it denied defendant's motion *in limine* and admitted gang evidence. *Villarreal*, 198 Ill. 2d at 232.

¶ 39 We are unpersuaded by defendant's reliance on *People v. Roman*, 2013 IL App (1st) 110882, and *People v. Iniguez*, 361 Ill. App. 3d 807 (2005). In *Roman*, the State introduced, among other evidence, pictures of the defendant's tattoos and elicited testimony from a police detective that the defendant was a member of the Latin Kings gang; however, no witness mentioned tattoos as relevant to an identification of the defendant. *Roman*, 2013 IL App (1st) 110882, ¶¶ 29-30. In *Iniguez*, "the State inundated the jury with evidence about street gangs," including two witnesses who gave lengthy testimony about street gangs. *Iniguez*, 361 Ill. App. 3d at 816. This court found the admission of the gang evidence was reversible error because "[a]lthough this extensive amount of gang evidence was allowed, there was no evidence the defendant was aware of the so-called motivating fact—a street gang fight six months before the killing," and the probative value of the evidence "was virtually nil." *Id*. at 817.

¶ 40 In the case at bar, unlike *Roman* and *Iniguez*, the evidence of gang membership was minimal and explained the actions of defendant and those who helped him immediately after the shooting. The State did not call an expert to testify about the structure, territories, or alliances of the gangs at issue, the jury was not inundated with gang evidence, and the gang evidence that was introduced at trial was probative of defendant's motive to fight and shoot Nance, a member of a rival gang.

¶ 41 Although gang evidence can be prejudicial given how the public generally views gangs (see *Smith*, 141 Ill. 2d at 58), here, the probative value of the gang evidence in this case was not substantially outweighed by the risk of unfair prejudice. As previously discussed, defendant's

membership in J-Town and the fact that J-Town was involved in a dispute with Crash Town, the gang to which Nance belonged, was highly probative as to why defendant shot Nance as well as the reason that his fellow gang members Crawford and Maynie helped him to conceal the crime and recanted their grand jury testimony. Any prejudice to defendant was not fatally unfair given that the gang evidence explained the context for a seemingly otherwise unexplainable offense. The record reveals that the gang evidence was limited to an officer explaining the feud and defendant's gang membership, and the witnesses who self-identified as gang members. Based on the record, we cannot say that no reasonable court would adopt the trial court's judgment that the probative value of the gang evidence outweighed its prejudicial effect. Accordingly, the trial court did not abuse its discretion in admitting gang evidence in this case. *Villarreal*, 198 Ill. 2d at 232. Because we find that the gang evidence was properly admitted, we need not reach defendant's alternative argument that the trial court erred when it denied his motion for a mistrial.

¶ 42 Defendant next contends that his 48-year sentence constitutes a cruel and unusual punishment because he was a juvenile at the time of the offense and the sentence is a *de facto* life sentence in violation of *Miller*. The State concedes that pursuant to *People v. Buffer*, 2019 IL 122327, defendant's sentence must be vacated and the cause remanded for resentencing.

¶ 43 In *Buffer*, our supreme court held that in order for a defendant sentenced for an offense he committed when he was a juvenile to succeed on a sentencing claim based upon *Miller* and its progeny, he must show both (1) that he was "subject to a life sentence, mandatory or discretionary, natural or *de facto*," and (2) that "the sentencing court failed to consider youth and its attendant characteristics." *Id.* ¶ 27. With respect to what constitutes a *de facto* life sentence for

a juvenile offender, the court held that "a prison sentence of 40 years or less imposed on a juvenile offender does not constitute a *de facto* life sentence in violation of the eighth amendment." *Id.* ¶ 41.

¶ 44 Accordingly, under *Buffer*, defendant's sentence of 48 years is a *de facto* life sentence. The record also shows that although the trial court mentioned at sentencing that defendant had a "difficult" upbringing, it did not specifically consider defendant's youth and its attendant characteristics when imposing sentence. As our supreme court has stated, a juvenile defendant may be sentenced to life imprisonment, but before doing so, the trial court must

> "determine[ ] that the defendant's conduct showed irretrievable depravity, permanent incorrigibility, or irreparable corruption beyond the possibility of rehabilitation. The court may make that decision only after considering the defendant's youth and its attendant characteristics. Those characteristics include, but are not limited to, the following factors: (1) the juvenile defendant's chronological age at the time of the offense and any evidence of his particular immaturity, impetuosity, and failure to appreciate risks and consequences; (2) the juvenile defendant's family and home environment; (3) the juvenile defendant's degree of participation in the homicide and any evidence of familial or peer pressures that may have affected him; (4) the juvenile defendant's incompetence, including his inability to deal with police officers or prosecutors and his incapacity to assist his own attorneys; and (5) the juvenile defendant's prospects for rehabilitation." *People v. Holman*, 2017 IL 120655, ¶ 46; see also *Buffer*, 2019 IL 122327, ¶ 19.

¶ 45 In the case at bar, defendant committed an offense, at age 17, which subjected him to a minimum of 45 years in prison and for which he received a sentence of 48 years. Because

defendant's sentence exceeded 40 years, he received a *de facto* life sentence (*id.* ¶ 41); additionally, the trial court failed to consider defendant's youth and its attendant characteristics in imposing that sentence. Therefore, pursuant to *Buffer*, defendant's sentence violates the eighth amendment of the United States Constitution and must be vacated. *Id.* ¶ 42. We therefore remand this matter for a new sentencing hearing. See *Id.* ¶¶ 44-47 ("Based on the particular issue raised in this appeal and in the interests of judicial economy, * * * the proper remedy is to vacate defendant's sentence and to remand for a new sentencing hearing."). Further, defendant shall be entitled on remand to be sentenced under section 5-4.5-105 of the Unified Code of Corrections (730 ILCS 5/5-4.5-105 (West 2016)). See *Buffer*, 2019 IL 122327, ¶ 47.

¶ 46 In light of our holding, we do not reach defendant's argument regarding his presentence custody credit. For the foregoing reasons, we affirm defendant's conviction, vacate his sentence, and remand for resentencing.

¶ 47 Affirmed in part; vacated in part; remanded for resentencing.