2019 IL App (1st) 160603-U

No. 1-16-0603

Third Division
September 30, 2019

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	Nos. 09 CR 14759
v.	)	Honorable Lawrence E. Flood,
RICARDO MARCHAN,	)	Judge, presiding.
Defendant-Appellant	)	

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Ellis and Justice McBride concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's conviction is affirmed where: (1) the trial court did not err in refusing to question the prospective jurors about their attitudes towards firearms, (2) the trial court properly admitted the firearms expert's testimony, and (3) trial counsel was not ineffective for failing to object to the expert's testimony.

¶ 2 Following a jury trial, defendant, Ricardo Marchan, was convicted of two counts of first degree murder and two counts of armed robbery and was subsequently sentenced to two terms of natural life in prison, consecutive to two 26-year terms of imprisonment. On direct appeal, defendant argues that: (1) the trial court erred in refusing to question the prospective

jurors about their attitudes toward firearms; (2) the trial court erred in admitting the firearm expert's testimony as the State failed to lay an adequate foundation; and (3) trial counsel was ineffective for failing to object to the firearms expert's testimony. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On August 2, 2009, about 4:30 a.m., defendant was arrested while in the process of robbing Armando Zamoa and Jireh Hernandez (Jireh) with a rifle. The armed robbery occurred after defendant allegedly shot and killed Patrick Cregan and Michael Hernandez (Michael) thirty minutes earlier. Defendant was charged under separate indictments for: first degree murder of Cregan (case no. 09-CR-16451); first degree murder of Michael (case no. 09-CR-16452); and two counts of armed robbery (case no. 09-CR-14579). These indictments were consolidated for trial. We recount the facts from defendant's trial below to the extent necessary to review his claims on appeal, and we note that defendant has conceded to his convictions for armed robbery.

¶ 5 Prior to trial, defendant filed two motions *in limine* requesting a hearing pursuant to *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) and a hearing pursuant to *People v. Safford*, 392 Ill. App. 3d 212 (2009). Both of these motions concerned expert testimony on firearms identification. In regards to the request for a *Frye* hearing, defendant challenged the admiissibility of firearms and toolmark identification evidence. The court took judicial notice of prior judicial decisions accepting firearms identification evidence and denied defendant's motion. The court found that the "expert would be able to testify to a reasonable degree of certainty." Defendant's request for a *Safford* hearing, on the other hand, related to the expert witness' background and factual basis for her opinions. The court denied that motion, finding

that the expert's testimony was admissible and stating that defendant would have the opportunity to cross-examine the witness on that issue, as well as present counterevidence. Additionally, the court noted that the jury determines the weight of the testimony. Defendant later moved to reconsider the denial of his *Safford* motion in light of *People v. Jones*, 2015 IL App (1st) 121016, ¶ 77-80 (*vacated* ab initio *due to death of the defendant in People v. Jones*, No. 119826 (Oct. 26, 2015)), where a firearms expert did not testify to specific points of comparison and this court reversed and remanded for a new trial. The trial court denied defendant's motion but ruled that the firearm expert could not opine that her conclusions were based on "a reasonable degree of scientific certainty"; instead, she could only frame her conclusions in light of her training, experience, and background and based upon her comparisons.

¶ 6 Defendant also filed a motion *in limine* regarding *voir dire* that included 29 proposed questions for the prospective jurors. The State objected to a question that read: "What are your views about firearm [*sic*]?" Following a hearing on the motion, the court ruled that the question would not be asked to prospective jurors. The court stated that it would follow its typical *voir dire* process, which involved informing the venire of the nature of the case and counts in the indictment. The court would then ask if there was "anything about the nature of the case that would affect [their] ability to be fair and impartial." The court further stated that "[i]mplicit within that question is the information that's contained in the indictment which I give to them" and that "the way I go about questioning in that regard *** will bring to light any issue that they may have."

¶ 7 During *voir dire*, the trial court read the charges in the indictment to the prospective jurors and included that defendant committed murder with a firearm and that he discharged a

firearm in the commission of an armed robbery. The trial court asked the prospective jurors "Is there anything about the nature of this case that I have explained to you so far that would affect your ability to be fair and impartial if you are chosen as a juror for this case?" Each of the twelve seated jurors answered in the negative.

¶ 8 During individual juror questioning, two prospective jurors voiced concerns regarding the involvement of a firearm. When asked if anything about the nature of the case would affect their ability to be fair and impartial, one juror responded "probably just the gun issue." This was further discussed outside the presence of the *venire* and the juror stated that he was "antigun" and it would be difficult for him to listen to the evidence with an open mind in light of "another school shooting[.]" Another juror stated that a close friend had been shot in the head during a robbery and she believed that it would affect her ability to be fair and impartial in this case. Both jurors were excused for cause.

¶ 9 A. Armed Robbery Investigation

¶ 10 We summarize the evidence presented at trial as it relates to defendant's charges of armed robbery, to which he has conceded. On August 2, 2009, about 4:30 a.m., Zamora, Jireh, and Placido Idiaquez arrived at Zamora's residence near the intersection of Hamlin Avenue and Dickens Avenue in two separate vehicles, with Placido as a passenger in Zamora's vehicle. Both Zamora and Jireh testified that prior to arriving at the residence they heard gunshots nearby. After Jireh exited his vehicle, a black SUV, later identified as defendant's black Chevrolet Blazer, parked near his vehicle. Defendant exited the vehicle and asked Jireh for money. Zamora, who had parked and exited his vehicle, heard arguing and walked over. As he approached, Zamora heard defendant using expletives and threatening Jireh. Defendant pointed a rifle at Zamora, who laughed and implied that the rifle

was not real. Defendant shot the rifle three or four times into the air. Defendant told them to give him their wallets and keys. At some point, defendant placed the rifle against Jireh's neck, which left a burn injury that was identified in a photograph at trial. Defendant then made them lay on the ground.

¶ 11 At the same time, Benjamin Velez, who lived nearby, was in his bedroom and heard people arguing. He looked outside his window and saw three individuals and two vehicles in the street. He observed defendant point a rifle at one of the individuals and shoot it into the air twice, though he informed the grand jury that defendant shot the rifle three times. Velez called 9-1-1 and informed the dispatcher that two individuals were being held up outside his apartment. He called 9-1-1 once again when he saw one of the individuals lay on the ground and soon after saw the police arrive.

¶ 12 Chicago police officer Jeffrey Muehlfelder, who was nearby assisting with a domestic battery call, responded to a call from dispatch regarding an armed robbery at Avers Avenue and Dickens Avenue. When he arrived at the intersection, he observed a black SUV double-parked on the street and defendant reaching inside the rear passenger side door. He made eye contact with defendant, who then closed the door, moved quickly to the driver's door, and entered the vehicle. At this point, Muehlfelder could see two individuals lying on the ground. He parked directly in front of defendant's vehicle to block his exit. Muehlfelder exited his vehicle with his gun drawn and repeatedly instructed defendant to place his hands where he could see them and exit the vehicle. He pulled defendant out of the vehicle and placed him in handcuffs. As this occurred, he observed shell casings on the dashboard of the vehicle.

¶ 13 At this point, several other police officers had arrived at the scene, including Chicago police officers Salvatore Sammartino, Gerros, and Witt, and Chicago police sergeant Michael

Saladino. Officer Muehlfelder patted down defendant and found two cell phones, keys, and a couple plastic cards in his pockets. He heard Sergeant Saladino yelling and walked towards the back of the Blazer and saw a rifle on the backseat. He secured the rifle by unloading it. It had four live rounds of ammunition in the magazine and one loaded in the chamber. He identified the weapon recovered from defendant's vehicle as a Hi-Point 9-millimeter rifle. He and the other officers observed several shell casings in the Blazer. Officer Witt recovered twenty shell casings from inside the Blazer, along with a box of Winchester 9-millimeter Luger plus P ammo that contained five live rounds. Officers Sammartino and Gerros received these items and inventoried them for the evidence technician. Muehlfelder observed two shell casings in the street and had an officer keep the scene secure until the evidence technician arrived. Muehlfelder found Zamora and Jireh's cell phones and keys in the grass by the street.

¶ 14 While en route to the police station, Officer Muehlfelder read defendant his *Miranda* rights. Officer Sammartino, who was aware that defendant had been read his *Miranda* rights, spoke with defendant at the police station. He asked defendant what had happened and defendant responded "I don't give a fuck; I'll do my time." He did not ask defendant any further questions.

¶ 15 The parties stipulated that Chicago police officer Gregory Horkacy would testify that on August 2, 2009, he recovered one casing from the front seat of the Blazer and two casings on the street near 3828 West Dickens Avenue.

¶ 16 B. Murder Investigations

¶ 17 As to the murders of Michael and Cregan, the following evidence was presented at trial.

¶ 18 Shoaib Amin, a Chicago cabdriver, testified that on August 2, 2009, about 4 a.m., he was heading north on Western Avenue when he saw someone driving in the south lane hit a parked vehicle. Amin called 9-1-1. While speaking with the dispatcher, he exited his vehicle and walked over to the vehicle that had hit the parked vehicle. He saw an individual, later identified as Michael, who appeared to have fainted. He waited there until the police and an ambulance arrived on the scene. He also spoke with a police officer on the phone about what he had observed. On cross-examination, he stated that he did not hear any gunshots.

¶ 19 Nicholas Marchand testified that on August 2, 2009, about 4:10 a.m., he was in the area of Western Avenue and LeMoyne Street visiting his girlfriend at a friend's apartment. He was, at that time, on the balcony with a friend when he saw a vehicle crash into a parked vehicle. He and his friend went to check on the person in the car. He saw an unconscious male, Michael, in the driver's seat. His friend called 9-1-1, and when the police arrived, Marchand spoke with them about what he observed. On cross-examination, he stated that he did not hear any gunshots.

¶ 20 Chicago police officer Hector Agosto testified that on August 2, 2009, he assisted Chicago police officer Reyno in responding to a traffic accident near the 1400 block of Western Avenue. When he arrived, Officer Reyno and an ambulance were already there. He observed two damaged vehicles and it looked as though at the time of the crash the blue vehicle was in motion and the silver vehicle was parked. He learned that the person in the blue vehicle, Michael, had been shot. As he walked north on Western Avenue, away from the scene, he found two shell casings and proceeded to secure the scene after notifying Officer Reyno.

¶ 21 Chicago police evidence technician Zbigniew Niewdach testified that on August 2, 2009, about 6:30 a.m., he was assigned to process the scene on Western Avenue. He testified that the blue vehicle had bullet defects on the front and rear passenger doors and that the front passenger window was broken. Niewdach removed the interior panel from the driver's side rear door and found metal fragments that could have been from fired bullets. The interior panel was also removed from the driver's door, and he found a fired bullet.

¶ 22 Cynthia Castiglione testified that on the date in question, she resided on the 1400 block of North California Avenue. At approximately 4:10 a.m., on August 2, 2009, she was sleeping when she heard gunfire outside her bedroom window. She stated that she heard about five or six gunshots and then she heard a crash. She looked out her west-facing window and observed a crashed car. She then heard "a car scream away" south on California Avenue. She called 9-1-1 and spoke to the police once they arrived.

¶ 23 Chicago police officer Monte Cassidy testified that he responded to a call of gunshots near LeMoyne Street and California Avenue at 4:13 a.m. Upon arrival, he observed a blue Buick crashed into a chainlink fence on California Avenue. He approached the vehicle and observed that all the windows, except for the windshield, were shattered and there was a bullet hole in the trunk. He saw a white male, later identified as Cregan, in the driver's seat who had sustained a gunshot wound to the head. He called for an ambulance and secured the crime scene.

¶ 24 Fred Heidmann, a retired Chicago police forensic investigator, testified that on August 2, 2009, he was called to process a crime scene on the 1400 block of California Avenue. Heidmann observed that a blue vehicle had crashed into the fence and there was what appeared to be a pool of blood outside the driver's door. He saw that several of the vehicle's

windows were shattered and there appeared to be bullet holes in the vehicle. There was also blood and broken glass throughout the inside of the vehicle. He and his partner also recovered and inventoried two fired bullets from the scene.

¶ 25 Chicago police detective Demosthenes Balodimas testified that on that morning, he and Chicago police detective Michael Landando were assigned to investigate Michael's murder. He learned during his investigation that another murder, that of Cregan, occurred on the same day within minutes of Michael's murder. He stated that he recovered two police observation device (POD) videos from the area where Michael was found. On POD 382, he observed a black SUV traveling fast on LeMoyne Street. On POD 1007, he observed a dark SUV with a luggage rack and a spare tire. Both POD videos were shown to the jury.

¶ 26 Detective Balodimas spoke with Chicago police detective Steve Tanaka, who was working on the armed robbery investigation. Balodimas was informed that a black Chrevolet Blazer was involved in the robbery and it had a luggage rack and spare tire on the back. Detective Balodimas also learned that Tanaka had recovered a rifle and twenty 9-millimeter Winchester Luger plus P shell casings from the Blazer. Balodimas believed that these casings were the same type as those found at Michael's homicide scene. He later submitted all of the firearms evidence collected from Michael and Cregan's homicide scenes to Illinois State Police for testing. The rifle was hand-carried to the Illinois State Police for comparison to all the firearms evidence collected. He had a warrant signed by a judge to search defendant's vehicle and the crime lab processed it. A couple of days later, he received a red light camera video from the 2400 block of West North Avenue, which was approximately one block from Michael's homicide scene. He testified that the video shows Michael's Ford Escape traveling eastbound in the right lane on North Avenue and proceeding to make a right turn onto

Western Avenue to go southbound. The video also shows a Chevrolet Blazer traveling eastbound in the left lane and making an abrupt turn to follow Michael. He concluded that it was defendant's vehicle observed in each of the videos. Detective Balodimas also learned from the cell phone records that the last phone call defendant made was to Joshua Moreno before midnight on August 1, 2009. At 2:20 p.m., on August 14, 2009, Detective Balodimas arrested defendant.

¶ 27 On cross-examination, Balodimas confirmed that he could not retrieve the license plate number from the red light camera video and that he could not see the occupants of the vehicles in the videos.

¶ 28 On redirect, Detective Balodimas confirmed that his opinion that the vehicle was defendant's was based on the totality of his investigation, including the red light camera, the POD videos, and the firearms evidence.

¶ 29 Joshua Moreno testified that he was friends with defendant in 2009. Moreno stated that at that time defendant had a black Chevrolet Blazer. In June 2009, Moreno received a phone call from defendant, who said that he wanted to show Moreno something. Defendant drove to Moreno's house. Moreno left his house and saw something wrapped up in a blanket in the backseat of the Blazer. Defendant then removed the blanket and showed Moreno a "big gun, a rifle." Moreno identified the rifle in the courtroom. Moreno stated that on other occasions when he spoke to defendant on the phone, defendant would say that "he was riding around with her" and Moreno understood "her" to mean the rifle. In July 2009, defendant again came to Moreno's house in his Blazer. Moreno asked defendant if he had "her" with him and defendant showed him the same rifle wrapped in the same blanket. Moreno declined

defendant's invitation to hang out because he did not want to ride around in his vehicle with the rifle in the backseat.

¶ 30 On August 1, 2009, Moreno received a phone call from defendant just prior to midnight. Moreno asked if defendant had the rifle with him and defendant told him that he did. Moreno told defendant that he needed to take the rifle home and then to call him back if he wanted to hang out. Moreno stated that he did not hear from defendant again that night.

¶ 31 Nancy Alonzo, defendant's sister, testified that in August 2009, defendant had a black Chevrolet Blazer with a luggage rack on the top and a spare tire on the back. She acknowledged that she told Assistant State's Attorney John Dillon that on June 27, 2009, she was having a garage sale and defendant arrived in the Blazer. She stated that underneath a baby blanket in the back of the Blazer was "a long, dark object."

¶ 32 John Dillon, former Cook County assistant state's attorney, testified that he worked on Michael and Cregan's homicide investigation in August 2009. He stated that on August 19, 2009, he met with Nancy Alonzo. During his conversation with her, she identified a photograph of the rifle as the one she saw in the back of defendant's Blazer. He stated that during her grand jury testimony he asked her: "Did that black metal part that you observed, do you now know that to be a barrel of a gun?" and she responded in the affirmative. She also testified that she told her brother that he was "stupid" and "if he got caught with that, he would be in big trouble."

¶ 33 Niewdach was recalled and testified that on August 3, 2009, he received a blood card from Michael's autopsy and a fired bullet recovered from Cregan's autopsy. He also testified that the distance between the scene of the armed robbery and the scene of Michael's murder was about two and one half miles and would take about 10 minutes to travel and the distance

between the scene of the armed robbery and the scene of Cregan's murder was just under two and one half miles and would take about nine or ten minutes to travel.

¶ 34 Chicago police forensic investigator Detra Gross testified that she received a warrant to search the Blazer and processed it for evidence. She removed lining from within the vehicle and preserved them for gunshot residue testing. She also recovered a live cartridge in the backseat and a wallet from the driver's seat belonging to Jireh.

¶ 35 The parties stipulated that Chicago police detective James Gigler would testify that on August 2, 2009, he recovered a black polo shirt, black t-shirt, and blue jeans from defendant in the course of the Cregan homicide investigation.

¶ 36 Ellen Chapman, a trace evidence analyst with the Illinois State Police, testified as a gunshot residue expert. She testified that the discharge of a firearm results in gunshot residue containing tri-component particles made up of lead, barium, and antimony. If she confirms the presence of the tri-component particles on a sample and there are a number of these particles, she considers that to be a positive sample for gunshot residue. If there are less than three tri-components and a large number of consistent particles, that sample would be considered inconclusive. A negative sample would not meet any of those criteria. Chapman stated that she received defendant's inventoried clothing and tested it for gunshot residue. She testified that her test sample from defendant's jeans was negative for gunshot residue. However, she found defendant's polo shirt positive for gunshot residue. She further found the panel of defendant's vehicle's door to be negative for gunshot residue and the ceiling liner to be inconclusive. She testified that her opinions were based on a reasonable degree of scientific certainty.

¶ 37 Dr. Denika Means, an assistant medical examiner for Cook County, testified that on August 3, 2009, she was assigned to determine the cause and manner of death for Michael and Cregan . Dr. Valeria Arangelovich, who was no longer with the Cook County Medical Examiner's Office at the time of trial, had originally examined the victims. Dr. Means received the original case file, which included the final autopsy report, any notes and diagrams, police reports, autopsy pictures, and radiographs.

¶ 38 She testified that Cregan suffered two gunshot wounds, one to the head and one to the right shoulder. She testified that the gunshot wound to the head was a fatal injury. She concluded that the manner of death was homicide and the cause of death was multiple gunshot wounds.

¶ 39 She testified that Michael suffered three gunshot wounds, one to the head and two to the back. She testified that each of the gunshot wounds could have been fatal. She concluded that the manner of death was homicide and the cause of death was multiple gunshot wounds.

¶ 40 Angela Horn, a forensic scientist for the Illinois State Police, testified as an expert in firearms and toolmark identification. She testified that it is possible to determine whether bullet or a cartridge casing was fired from a particular firearm. To make that determination, she stated that she first evaluates the fired evidence for class characteristics, which are physical features that allow grouping similar objects together. For cartridge casings, these include caliber, the shape or type of firing pin, and the style of breechface markings. For fired bullets, this includes the caliber, the rifling characteristics which encompass the direction and twist of the rifling, the number of lands and grooves around the bullet, and the width of those lands and grooves. If there is a firearm submitted, she generates test shots in a water tank. The bullets fired in that test are recovered, and the same class characteristics are

evaluated and recorded. If the characteristics of the test shots and the fired evidence are similar, they are looked at with a comparison microscope "to determine if there are microscopic patterns on that evidence [so as to] form an opinion that it was fired in that particular firearm." However, if the class characteristics are not similar, then that firearm can be eliminated "as having been even a possibility that it could have fired that evidence." She testified that an inconclusive result can occur where she simply does not know or where the evidence is unsuitable because it has no microscopic features for a comparison. The comparison microscope is used to look for individual characteristics, which are imperfections and irregularities that are produced inside the firearm and imparted on the bullets and the cartridge casings. Those irregularities will then create a microscopic pattern of scratches, called striations or impressions. Those patterns are compared to see if they were fired from the same firearm. Horn went into greater detail about the class characteristics for bullets and cartridge casings, and she utilized demonstrative exhibits to explain these characteristics to the jury. Finally, she testified that this testing and analysis method is commonly accepted within the forensic community for firearms and toolmark identifications.

¶ 41 As to this case, Horn testified that between August 10 and August 12, 2009, she tested, analyzed, and generated reports for the recovered firearms evidence. She received defendant's rifle and identified it as a Hi-Point 9-millimeter Luger, which held ten rounds. She also received a magazine and five rounds of Winchester 9-millimeter Luger plus P ammunition. She fired the rifle into a water tank, retrieved the bullets and casings, and recorded the class characteristics.

¶ 42 From the scene of the armed robbery, she received two cartridge casings, which had similar class characteristics. She compared them under the comparison microscope, and

testified that "based upon [her] training and experience in methods commonly accepted in the forensic community for identification of firearms evidence[,]"the two catridge casings came from defendant's rifle. This conclusion was verified by analyst Kurt Murray.

¶ 43 From the Blazer, she received and examined 20 cartridge casings. She compared them to one another and to a test shot from the rifle and determined "based upon a reasonable degree of forensic certainty" that the casings had similar class characteristics and were fired from defendant's rifle. This conclusion was verified by analyst Amy Stevens. She received and analyzed another casing found between the seats of the Blazer. She testified that "based upon a reasonable degree of forensic certainty on procedures commonly accepted within the community for identification of firearms analysis[,]" the casings were also fired from defendant's rifle. That conclusion was verified by analyst Kurt Salinski.

¶ 44 From the scene of Michael's murder, she received a fired bullet and some bullet fragments. She compared the fragments to the fired bullet and the fired bullet to her test bullet. She determined "based upon a reasonable degree of forensic certainty" that defendant's rifle shot the fired bullet and that three of the fragments came from defendant's rifle. She also determined that one fragment was inconclusive and two fragments were unsuitable for comparison. These conclusions were verified by analyst John Flaskamp. She also received two casings and determined that they were fired from the same firearm, which was verified by analyst Chris Ristrelli.

¶ 45 From the scene of Cregan's murder, she received three fired bullets. She stated that all three had similar class characteristics to the bullet from Michael's case and the test bullet. After examining them under the comparison microscope, along with the test bullet, she "reach[ed] an opinion based upon a reasonable degree of forensic certainty" that the bullets

were fired from defendant's rifle. She also received some bullet fragments, one of which she determined was fired from the same firearm as the bullets. These conclusions were verified by analyst Brian Mayland.

¶ 46 On cross-examination, Horn testified that all of the casings were 9-millimeter Luger plus P. She stated that she did not track down the year the rifle was made. She acknowledged that many guns share the same class characteristics. She testified that the individual characteristics are "an overall pattern that you're looking at to see if it is reproducing and whether it's complex or not." She stated that she did not measure the scratches or striations during her comparisons. She confirmed that there is no universal database for her to compare individual characteristics to every gun ever made and gun manufacturers are not required to test fire every gun and store images of the firearms markings.

¶ 47 She further testified that she did not test fire another Hi-Point rifle for comparison because "based on [her] knowledge of how those breech faces are machined [she] didn't feel the need to look for another firearm to compare it to." She stated that she had attended a seminar given by the owner of Hi-Point. She also confirmed that in 2009 there was no microstamping requirement for firearms in Illinois. She explained microstamping to be "a numerical identifier of guns and/or cartridge manufacturing that then it would be traceable *** back to a particular gun."

¶ 48 She stated that it is a requirement to have another analyst verify her conclusions and the other analyst can disagree with them. If there was a disagreement, it would go to the supervisor, but that a verification analyst had never disagreed with her in the thousands of comparisons she has completed. She testified that she did not compare the recovered casings

and bullets from each crime scene to one another; she compared them to the others found at the same crime scene and to defendant's rifle.

¶ 49 On redirect examination, she testified that she has disagreed with another analyst in the past during the verification process and it went to a supervisor. She stated that she did not receive a request to compare the recovered bullets and casings to anything other than the firearm and that she takes requests from the State and from the defense. Finally, she stated her opinion that "the fired evidence that was in these three cases that was suitable for comparison that I could identify was fired in that particular Hi-Point 995 rifle."

¶ 50 Defendant moved for a mistrial, arguing that the defense never received information that Horn had taken a seminar from the owner of Hi-Point, and the court denied that motion. The court also denied defendant's motion for a directed verdict. The defense rested. After closing arguments, the jury found defendant guilty of first degree murder for Cregan and Michael and the armed robbery of Zamora and Jireh. His motion for a new trial was also denied.

¶ 51 Following a hearing, the trial court sentenced defendant to two concurrent terms of 26 years' imprisonment for armed robbery to be served consecutively to his two concurrent terms of natural life in prison for first-degree murder. Defendant moved to reconsider his sentence, which the court denied. Defendant now appeals his two first degree murder convictions.

¶ 52 II. ANALYSIS

¶ 53 A. *Voir Dire* Questioning

¶ 54 Defendant claims that the trial court erred in refusing to ask prospective jurors about their attitudes towards firearms. Therefore, defendant contends that this error denied him of his

constitutional right to trial by an impartial jury. See *People v. Encalado*, 2018 IL 122059, ¶ 24. We disagree.

¶ 55 In order to safeguard that constitutional right, inquiry is allowed during *voir dire* to determine whether any juror has a bias, opinion, or prejudice that would affect their ability to be fair in rendering a verdict following the trial. *Id.* "The purpose of *voir dire* is to ascertain sufficient information about prospective jurors' beliefs and opinions so as to allow removal of those members of the venire whose minds are so closed by bias and prejudice that they cannot apply the law as instructed in accordance with their oath." *People v. Cloutier*, 156 Ill. 2d 483, 495-96 (1993).

¶ 56 Illinois Supreme Court Rule 341 provides that the trial court shall examine the prospective jurors with questions that the court deems appropriate to determine their ability to serve as jurors in the case. Ill. S. Ct. R. 431(a) (eff. July 1, 2012). The trial court has discretion over the *voir dire* process, including whether additional submitted questions are appropriate, though that discretion must be exercised in furtherance of the purpose of *voir dire*. *Encalado*, 2018 IL 122059, ¶ 25. Thus, we review the trial court's refusal to ask the jurors about their views towards firearms for abuse of discretion. *People v. James*, 2017 IL App (1st) 143036, ¶ 32. Abuse of discretion is found where the trial court's decision is "arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court." *Patton v. Lee*, 406 Ill. App. 3d 195, 199 (2011).

¶ 57 For a question to be constitutionally necessary it must be more than helpful; without the question, the defendant's proceedings must be rendered "fundamentally unfair." *People v.Terrell*, 185 Ill. 2d 467, 485 (1998). Additionally, this court focuses on "'whether the means used to test impartiality have created a reasonable assurance that prejudice would be

discovered if present.'" *James*, 2017 IL App (1st) 143036, ¶ 32 (quoting *People v. Peeples*, 155 Ill. 2d 422, 459 (1993)).

¶ 58 Defendant relies on *People v. Strain*, 194 Ill. 2d 467, 470-73 (2000), to support his argument that the court's questioning was too broad and vague to sufficiently prompt any prospective juror's prejudice or negative feelings towards firearms. In *Strain*, our supreme court held that where gang membership and testimony from gang members was a significant aspect of the trial, the trial court did abuse its discretion in refusing to ask juror specifically about their attitudes towards gangs and whether their credibility determinations would be affected by gang affiliation. *Id.* at 480.

¶ 59 Illinois courts have not extended *Strain* to any other specific areas of controversial inquiry. See *People v. Encalado*, 2018 IL 122059, ¶¶ 28-33 (prostitution); *People v. Anderson*, 407 Ill. App. 3d 662, 682 (2011) (prior convictions); *People v. Dixon*, 382 Ill. App. 3d at 245 (drug abuse). Additionally, we note that in *James*, 2017 IL App (1st) 143036, ¶¶ 30, a case dealing with a similar issue, the defendant requested that the trial court question the potential jurors regarding their feelings about guns because he was charged with illegal possession of a firearm and believed that the recent media coverage would cause juror bias against guns. There, we also declined to follow *Strain*, as the defendant requested and instead, found that informing the potential jurors of the charges, including that a firearm was involved, and asking them whether they could apply the law in a fair and impartial manner sufficiently probed the venire for bias against guns. *Id.* ¶¶ 35-40.

¶ 60 Here, the prospective jurors were informed at the beginning of *voir dire* that the charges against defendant involved the illegal possession and use of a firearm. The court then asked the venire whether there was anything about the nature of the case that would affect their

ability to serve. Each prospective juror responded in the negative to this question. As *voir dire* continued, multiple members of the panel did, in fact, voice concerns regarding the involvement of a gun. Specifically, two prospective jurors informed the court that they did not think they could be impartial because of their feelings towards guns. These prospective jurors were excused for cause. Therefore, defendant cannot establish that the court's refusal to ask the venire about their attitudes towards firearms left prejudiced venire members undiscovered. See *James*, 2017 IL App (1st) 143036, ¶ 40 ("[T]he trial court's questioning of the prospective jurors created a reasonable assurance of impartiality.").

¶ 61 Moreover, the venire was told that defendant's charges involved the use of a firearm in the commission of several crimes. The venire would not need any other information about the relation of firearms to defendant's case to determine whether they harbored any prejudices or biases that would prevent them from "apply[ing] the law as instructed in accordance with their oath." *People v. Cloutier*, 156 Ill. 2d 483, 495-96 (1993). Also, the question proposed by defendant does not probe any deeper or implicate some specific concern about firearms than the court's own question to the venire. In *Strain*, defense counsel requested that the court ask the venire whether they would find the defendant "less believable" due to his gang affiliation. 194 Ill. 2d at 471. Our supreme court concluded that question should have been asked because it involves a more specific probing of a controversial issue that could have affected the jurors' ability to assess the credibility of witnesses at trial. *Id.* at 471-72. The same cannot be said of defendant's proposed question, and we find that it was not fundamentally unfair to exclude this question.

¶ 62 Accordingly, we conclude that the trial court did not abuse its discretion in refusing to ask about the prospective jurors' attitudes towards firearms.

¶ 63 B. Adequate Foundation for Horn's Opinions

¶ 64 Defendant next argues that the trial court erred in admitting Horn's testimony because the State failed to lay adequate foundation. As an initial matter, we note the parties disagree on the appropriate standard of review for this claim of error. Defendant claims that the standard of review should be *de novo*, whereas the State argues that the applicable standard is abuse of discretion. The State relies on *Simmons*, where we found that in determining whether an expert's foundation for his opinions was sufficient, the trial court had to resolve questions of fact and credibility. 2016 IL App (1st) 131300, ¶ 112. This court subsequently determined that a question of law was not at issue and that an abuse-of-discretion standard should apply in reviewing the foundation of an expert's opinion. *Id.* ¶¶ 109-114. We find that the State correctly relied on *Simmons* and therefore, review the issue for an abuse of discretion. *Id.* ¶ 109; see also *Snelson v. Kamm*, 204 Ill. 2d 1, 24 (2003) (stating that "the decision to admit expert testimony is within the sound discretion of the trial court").

¶ 65 Having found that abuse of discretion is the appropriate standard of review, we will now address defendant's argument that the trial court improperly admitted Horn's testimony because the State failed to lay an adequate foundation for her opinions that the recovered bullets and cartridge casings were fired from defendant's rifle. Specifically, defendant contends that the foundation was inadequate because she "provided no specific details about the individual characteristics of the evidence that led to her opinion" and "failed to explain the specific basis for her opinions that the bullets and cartridge [casings] were fired from [defendant's] rifle."

¶ 66 Under Illinois Rules of Evidence 702, a witness is qualified to testify as an expert depending upon their "knowledge, skill, experience, training, or education." Ill. R. Evid. 702

(eff. Jan. 1, 2011). "A person will be allowed to testify as an expert if his experience and qualifications afford him knowledge that is not common to laypersons, and where his testimony will aid the trier of fact in reaching its conclusions." *Thompson v. Gordon*, 221 Ill. 2d 414, 428 (2006) (citing *People v. Miller*, 173 Ill. 2d 167, 186 (1996)). The party presenting the expert witness is required to lay an adequate foundation to establish that the information on which the expert bases her opinion is reliable. *People v. Simmons*, 2016 IL App (1st) 131300, ¶ 115. Once a proper foundation is laid, the expert's testimony is admissible and the jury must then determine the weight of the expert's opinions. *Id.*

¶ 67 On direct examination, Horn testified as to her expertise in the field and then explained the process for conducting a firearms analysis, like that involved in this case. She explained class characteristics and individual characteristics, along with the use of the comparison microscope for the latter identification. She also testified that she generated test shots by firing defendant's rifle into a water tank; these were her reference, or comparison, bullets and casings. She compared the recovered bullets (or bullet fragments) and casings from each of the three crime scenes to the test bullets and casings, and she concluded that all of the recovered firearms evidence, save for some bullet fragments which were either inconclusive or were unsuitable for comparison, were fired from defendant's rifle. Each of her conclusions was verified by another analyst. Horn's testimony was highly detailed and informed the jury of the various procedures normally used in the field of firearms identification. Further, defendant was able to cross-examine Horn on all of her opinions, qualifications, and methods. Specifically, defendant elicited that there were other methods for firearms identification and that Horn did not measure each striation for her comparisons. Based on this record, we find that the trial court did not abuse its discretion in permitting

Horn to testify as to her opinions on the firearms evidence recovered in this case and the jury was properly permitted to determine the weight of her opinions. *See Simmons,* 2016 IL App (1st) 131300, ¶ 131.

¶ 68 Moreover, "the basis for a witness' opinion generally does not affect [her] standing as an expert; such matters go only to the weight of the evidence, not its sufficiency." *Snelson*, 204 Ill. 2d at 26. Thus, in this case, it was for the jury to determine how much weight to give Horn's testimony based upon her given credentials and the basis for her opinions. The defense had the ability, as the trial court pointed out prior to trial, to undermine or challenge Horn's opinions through cross-examination, and the defense properly utilized cross-examination for that purpose. See *id.* at 27 (stating that "it was up to [the defense] to reveal any alleged deficiency in [the expert's] testimony").

¶ 69 Finally, defendant greatly relies on *People v. Safford* to support his argument that an expert must specifically explain to the trier of fact how the characteristics of the bullets led her to conclude that they were fired from the same firearm. In that case, the defendant objected to the State's fingerprint expert's testimony because the expert did not list any points of comparison to support his opinion that the recovered fingerprint matched his fingerprint. *Id.* at 216. The fingerprint examiner was qualified as an expert and testified that he looked at three levels of detail for each fingerprint he examined. *Id.* at 220. He concluded, based on his training and experience, that defendant's fingerprint and the recovered fingerprint from the crime scene matched. *Id.* On cross-examination, he stated the he did not take notes during his comparison analysis and did not record why he arrived at his conclusions. *Id.* The jury found defendant guilty. On appeal, the *Safford* court reversed, finding that the expert was unable to testify to those facts upon which his opinions were

based and that the trial court erred in admitting the expert's testimony without an adequate foundation for his opinions. *Id.* at 223, 227.

¶ 70 However, this court has repeatedly declined to follow *Safford*, stating that the court did not employ the proper analysis for determining the admissibility of an expert's opinion. See *Simmons*, 2016 IL App (1st) 131300, ¶¶ 120-28; *People v. Robinson*, 2018 IL App (1st) 153319, ¶ 19; *People v. Wilson*, 2017 IL App (1st) 143138, ¶¶ 41-42; *People v. Negron*, 2012 IL App (1st) 101194, ¶ 40 (stating that *Safford* is an "outlier case"). Specifically, this court has found that *Safford*'s holding that an expert is required to testify to the factual basis for their expert opinion in order for their testimony to be admissible is an incorrect statement of law, and in fact, the factual basis for an expert's opinions is a matter for cross-examination. *Wilson*, 2017 IL App (1st) 143183, ¶¶ 38, 42 (citing to *People v. Williams*, 238 Ill. 2d 125, 140 (2010)). Accordingly, we similarly decline to follow *Safford*.

¶ 71 For these reasons, we find defendant's argument without merit and conclude that the trial court did not err in admitting Horn's testimony.

¶ 72 C. Ineffective Assistance of Trial Counsel

¶ 73 Finally, defendant claims that his trial counsel was ineffective for failing to object to Horn's testimony. Specifically, he contends that his counsel erred when he failed to object to Horn's qualification that her opinions were "based upon a forensic certainty." Defendant continues that the trial court would have sustained counsel's objection on the basis of the pre-trial ruling and the State would have been unable to bolster the authority of Horn's opinions. With less weight given to the expert testimony, defendant contends that the jury would not have found defendant guilty of first degree murder of Cregan and Michael. For that reason, defendant asserts that counsel's failure prejudiced him.

¶ 74 The standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984) and adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504 (1984), governs claims of ineffective assistance of counsel. To establish such a claim, a defendant must show that (1) counsel's performance was deficient and (2) the deficient performance prejudiced the defendant. *People v. Petrenko*, 237 Ill. 2d 490, 496 (2010). To establish deficient performance, the defendant must demonstrate that his attorney's performance fell below an objective standard of reasonableness. *People v. Evans*, 209 Ill. 2d 194, 219-20 (2004) (citing *Strickland*, 466 U.S. at 687. As to the second prong, the defendant must show that "but for counsel's unprofessional errors, there is a reasonable probability that the result of the proceeding would have been different[,]" meaning "a probability that would be sufficient to undermine confidence in the outcome of the trial." *People v. Houston*, 229 Ill. 2d 1, 4 (2008). Failure to establish either prong is fatal to the claim. *People v. Givens*, 237 Ill. 2d 311, 331 (2010).

¶ 75 We find that defendant cannot satisfy either prong. First, counsel's performance was not deficient because at the pre-trial hearing, the trial court only prevented Horn from stating that her opinion was based upon a *scientific* certainty. The court specifically allowed for Horn to testify in light of her training, experience, and background. There was no limitation to her stating that her opinion was based on a forensic certainty, which was what she stated at trial, and thus, her testimony did not run afoul of the court's prior ruling. Moreover, her statement was proper because her experience and background is in forensics. Under these circumstances, it is unlikely that defense counsel's objection would have been sustained and thus, counsel committed no error.

¶ 76 Defendant also cannot establish that counsel's alleged error prejudiced him. Horn's testimony was not the only evidence against defendant. At trial, the State presented evidence from witnesses from all three crime scenes that confirmed the approximate time that each of the murders occurred and the State introduced evidence from a red light camera and POD videos that show a similar vehicle to defendant's near the crime scenes of both murder victims at the same time. Moreover, Horn's testimony would not have been entirely excluded had defense counsel successfully objected. Her testimony would have merely been limited as to the degree of certainty. Although this may have lessened the weight of her testimony, we do not believe it would have altered the jury's verdict when the totality of the evidence presented at trial is considered. Thus, there is no reasonable probability that the jury would not have found defendant guilty but for trial counsel's alleged failure.

¶ 77 Accordingly, defendant cannot satisfy either prong and his claim of ineffective assistance of counsel fails.

¶ 78 III. CONCLUSION

¶ 79 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 80 Affirmed.