2019 IL App (1st) 170953-U

THIRD DIVISION
August 7, 2019

No. 1-17-0953

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 15 CR 17922
	)	
LADARREN M. BALL,	)	The Honorable
	)	Vincent Gaughan,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* Evidence presented at defendant's bench trial was sufficient to sustain his conviction for first degree murder; defendant forfeited argument that police officer's testimony was improper hearsay that violated his right of confrontation; trial court did not abuse its discretion in imposing a 39-year sentence on defendant.

¶ 2 Defendant Ladarren M. Ball was convicted in a bench trial of first degree murder and sentenced to 39 years in the Illinois Department of Corrections. Defendant argues on appeal that: (1) the evidence did not establish his guilt beyond a reasonable doubt, (2) the trial court admitted improper hearsay testimony that violated his constitutional right to confrontation, and (3) the trial court imposed an excessive sentence on him. We affirm defendant's conviction and sentence.

¶ 3 I. BACKGROUND

¶ 4 The evidence presented at defendant's trial demonstrated that on September 19, 2015, Zika Urosevic, who went by the nicknames "Mike" and "White Mike," died as a result of multiple gunshot wounds he sustained in a shooting on Keeler Avenue north of its intersection with Division Street in Chicago. At that intersection is a liquor store. Behind the liquor store is an empty lot where people frequently congregate. An alley runs adjacent to the lot.

¶ 5 Jamil Grayer testified that he had lived near that area for several years as of the day of the shooting. That afternoon, he went to the lot and discovered that people were congregating in a different area than they normally did. The only person standing in the area where people normally stood was defendant. Grayer testified that he had seen defendant around the neighborhood and knew his name, but defendant was not someone he knew personally. Grayer stated that when he arrived, defendant was wearing black jeans and a white leather coat, with one arm pulled up inside a sleeve so that his hand was not visible. Defendant had a red bandana wrapped around his other hand. Defendant was pacing back and forth and seemed upset. He told Grayer that he had been robbed the night before and that the people standing around had something to do with the robbery. Grayer testified that defendant also said that it was just a misunderstanding, and he was going to let it go.

¶ 6 Grayer testified that defendant remained in the general area until shortly before 6:00 p.m., when defendant left. About 15 or 20 minutes later, Grayer heard someone nearby point and say, "Look out." Grayer looked where that person was pointing, and he saw two men coming from the alley across the street shooting guns. He was able to see one of the shooters and saw that it was defendant. At that time, defendant was no longer wearing the white coat. He was wearing a black shirt, which Grayer thought was a hoodie, and a red bandana covering his face below his

nose. Grayer heard approximately five gunshots. When the shots were fired, everyone scrambled, and Grayer was knocked over in the melee. Grayer ran in the opposite direction of the liquor store. During his testimony, a video of the incident was admitted into evidence and published for the court. He testified that the video showed people standing near the lot, shots being fired, "White Mike" falling over, and everyone else trying to run away.

¶ 7 Grayer did not talk to the police on the day of the shooting, but he called the police later. On September 22, 2015, he met with three detectives. One of the detectives showed him a photo array, and Grayer identified a photo of defendant as being one of the shooters. He testified that the photo of defendant included in the photo array showed him with a different hairstyle than he had on the day of the shooting. Grayer described that on the day of the shooting, defendant wore a hairstyle of "[l]ittle braids, small braids that are coming out in different directions."

¶ 8 On cross-examination, Grayer was asked about certain statements he had previously made before the grand jury. He testified that he did not personally hear defendant yelling at people on the day of the incident. He testified that when he approached defendant, be believed defendant had a gun. However, he did not see the gun when he spoke to defendant or ask defendant whether he had one, but he did say to defendant that he thought he had a gun based on the way he was wearing his coat. He told defendant that if he did not have a problem, then he should put the gun away. At the end of the conversation defendant said it was okay, so Grayer left it at that. In response to questioning concerning the video of the incident that had been admitted into evidence, Grayer could not determine from the video which shooter was defendant. He testified that he looked across the alley before he started running, when someone yelled to watch out.

¶ 9 Ashley Baggett testified that on the day of the shooting, she was at her aunt's house, which was adjacent to the area where the shooting occurred. Baggett testified that she had lived in that

area her whole life, and she knew both defendant and "White Mike" from the neighborhood. That morning, she was outside of her aunt's house and saw defendant, who was wearing a white leather coat with one of his arms in the sleeve so his hand could not be seen. He also had with him a red bandana, which he sometimes had in his hand and other times had hanging out of the back of his pants. Defendant said to Baggett that he had been robbed the night before and that there "better be nobody standing out here when I come out back."

¶ 10 Baggett testified that at about 6:00 p.m., she was inside her aunt's house. Her father, Antrone Hall, and her boyfriend, Lorenzo Ransfer, whose nickname is "Rody," were outside the house at that time. "White Mike" was also outside. Baggett heard gunshots, "a couple, maybe three or four," which sounded like they were right outside the house. When this happened, she got onto the floor. When the gunshots stopped, she got up and looked out the window because she knew her father and boyfriend were outside. She testified that when she looked out the window, she "saw Ladarren and another boy shooting." She testified that she saw defendant running towards where everybody else had run. Defendant then stopped and looked in the direction of the house, at the window that Baggett was looking out of. Baggett testified that she made eye contact with defendant, who then turned and chased the people he was trying to chase. At that point, he was not wearing the white leather jacket, but instead he had on a hoodie. He was also wearing a bandana over part of his face, but she could see his eyes. The video of the incident that had been admitted into evidence previously was again published during Baggett's testimony, and she identified defendant as being depicted in the video. After the shooting, she testified that she came outside and saw "White Mike" lying on the ground.

¶ 11 Baggett testified that a couple of days later, she talked to a police officer who put her in contact with Detective Timothy O'Brien. On September 22, 2015, she went to the police station

and met with Detective O'Brien. She viewed a photo array while she was there, in which she identified a photo of defendant as being the person she saw shooting. She testified that the photo of defendant in the photo array showed him with a "fade" such that he "doesn't have any hair," and this was different than his hairstyle on the day of the shooting. Asked what his hairstyle had been then, she answered, "Like, long dreads. Like, he was starting to grow dreads."

¶ 12 On cross-examination, Baggett testified that defendant had initiated the conversation with her that morning. In it, he mentioned Baggett's boyfriend Lorenzo a number of times. She testified Lorenzo hung out in that area every day, but he did not associate with defendant. She testified that when Lorenzo eventually came outside, defendant "was saying he was gonna kill somebody, because he supposedly got robbed the night before, and he thought that they had something to do with it." She testified that defendant was disrespectful to her in their conversation, and when Lorenzo walked up, he told defendant not to say anything else to her, but instead to talk to him if he had a problem.

¶ 13 Hall testified that he was Baggett's father and was also at the house that day. He testified that he had a conversation with defendant, in which defendant told him that someone had robbed him of some cigarettes and money. Defendant told him that he thought Rody and others had something to do with it. Hall testified that he was trying to calm defendant down. Defendant eventually said to Hall that "it was over with," that "he wasn't going to do anything," and "don't worry about nothing, everything was cool." Hall testified that at the point when they had that conversation, defendant was wearing a white Pelle jacket and some jeans. He also had a red handkerchief or head scarf with him then. His hairstyle then was "[t]wists." Defendant stayed in the area for about an hour following his conversation with Hall, and then defendant left.

¶ 14 Hall testified that as he was sitting off the alley by the house, defendant returned with one

of his friends, and "they came out of the alley shooting." They were shooting toward the gate where Rody and his friends, including "Mike," were standing. When Hall saw defendant and the other person shooting, he jumped out of his chair and ducked behind a tree. Hall then looked back and saw defendant and the other person pause in the middle of the street. Hall stated that "[t]hen they ran towards the guys that was running, and they started shooting." Hall testified that at this point, defendant was dressed in all black with a red bandana. He was wearing a hoodie. Hall could see defendant's face.

¶ 15 After the incident, Hall was interviewed by a police officer at the scene. He also went to the police station on September 22, 2015, and viewed a photo array. He identified a photo of defendant in the photo array as the person who committed the shooting, with his friend. Hall stated that the only thing different about the photo was that in it, defendant "has a short cut instead of the twists in his hair."

¶ 16 On cross-examination, Hall testified that he was present when defendant had a conversation with Rody. In that conversation, Rody was basically saying to defendant that he did not have anything to do with him being robbed. He also testified that defendant did not have anything covering his face at the time of the shooting. Hall knew defendant had the handkerchief then, however, because Hall saw that he dropped it as he ran.

¶ 17 Detective Timothy O'Brien of the Chicago Police Department testified that he worked the homicide investigation involving this incident. He testified that on September 21, 2015, he was contacted by another police officer named Aaron Cunningham, and Officer Cunningham put Detective O'Brien in contact with one of his sources who wished to remain confidential. Detective O'Brien testified that he spoke on the phone with Officer Cunningham's source, and then they met in person. After doing so, he talked to tactical officers in the 25th District. After

this, he identified defendant as an individual that would be included in a photo array. In the course of his investigation, he identified Grayer, Baggett, and Hall as witnesses who would view the photo array. Other officers administered the photo array to these three witnesses individually, and Detective O'Brien learned the results of their viewing of the photo array. After these witnesses viewed the photo array, Detective O'Brien took steps to have defendant arrested.

¶ 18 On cross-examination, Detective O'Brien testified that he did not speak with Hall at the scene when he canvassed the area following the shooting. He testified that Detective Anthony Green was the officer who spoke to Hall that day. Detective O'Brien testified that according to a police report, Hall stated to Detective Green that one of the two offenders "had light skin wearing all black clothing, something red covering his face," and the second offender had "a dark complexion with twists in his hair, wearing a red hooded sweatshirt that *** somewhat covered his face and black pants."

¶ 19 At the conclusion of evidence and argument, the trial court found defendant guilty of first degree murder while armed with a firearm. In ruling, the trial court stated that while there were inconsistencies in Hall's testimony concerning the shooter he observed who he identified as defendant, those inconsistencies were not fatal. The trial court also found that Grayer and Bagget had testified that they saw defendant throughout the day around the area. Grayer testified that shortly before 6:00 p.m., he did not see defendant, and then he saw him at 6:00 p.m. coming out of the alley. The trial court therefore found that, considering the totality of facts, it had been proven beyond a reasonable doubt that defendant was there and was one of the shooters.

¶ 20 Defendant filed a timely post-trial motion, in which he argued that the testimony of Grayer, Baggett, and Hall identifying defendant as the shooter was not believable. The trial court denied this motion. After a sentencing hearing, the trial court sentenced defendant to 39 years in the

Illinois Department of Corrections and three years of mandatory supervised release. Defendant filed a motion to reconsider his sentence, which the trial court denied. Defendant then filed a timely notice of appeal.

¶ 21 II. ANALYSIS

¶ 22 A. Sufficiency of the Evidence

¶ 23 Defendant's first argument on appeal is that the State failed to prove beyond a reasonable doubt that he shot a weapon with the intent to kill or cause great bodily harm to Urosevic or another, so as to sustain a conviction for first degree murder. He argues that none of the three eyewitnesses actually saw the shooting, that no one identified defendant by name to the police until they produced a photo array including defendant three days later, and that the description given by Hall at the scene did not match his testimony at trial or that of Grayer or Baggett.

¶ 24 When considering a challenge to the sufficiency of evidence, this court determines whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the required elements beyond a reasonable doubt. *People v. Newton*, 2018 IL 122958, ¶ 24. It is not the role of this court to retry the defendant. *People v. Gray*, 2017 IL 120958, ¶ 35. Rather, it is the responsibility of the trier of fact, which was the trial court in this case, to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts. *Id.* Therefore, this court does not substitute its judgment for that of the trier of fact involving the weight of the evidence or the credibility of the witnesses. *Id.* All reasonable inferences from the evidence must be drawn in favor of the prosecution. *Newton*, 2018 IL 122958, ¶ 24. This court will not reverse unless the evidence is so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *Id.*

¶ 25 The testimony of even a single witness is sufficient to convict if the testimony is positive

and credible, even where it is contradicted by the defendant. *Gray*, 2017 IL 120958, ¶ 36. Where a finding of guilt depends on eyewitness testimony, this court must decide whether a fact finder could reasonably accept the testimony as true beyond a reasonable doubt. *Id.* (citing *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004)). "Under this standard, the eyewitness testimony may be found insufficient 'only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt.' " *Gray*, 2017 IL 120958, ¶ 36 (quoting *Cunningham*, 212 Ill. 2d at 280). Defendant cites the five factors set forth in *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972), which this court has considered in assessing the reliability of identification testimony: (1) the witness' opportunity to view the offender during the offense; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the offender; (4) the witness' level of certainty at the subsequent identification; and (5) the length of time between the crime and the identification. *People v. Joiner*, 2018 IL App (1st) 150343, ¶ 47 (citing *People v. Slim*, 127 Ill. 2d 302, 307-08 (1989)).

¶ 26 Defendant argues that the consideration of these factors leads to the conclusion that the identification by any of the three eyewitnesses of defendant as one of the shooters was not reliable. First, he points out that all three witnesses described taking immediate action to protect themselves at the sound of gunfire, which means that none of the three actually saw the shooting. He points to Grayer's testimony that he ran away from the shooters, Hall's testimony that he hid behind a tree, and Bagget's testimony that she dropped to the floor inside the house.

¶ 27 We disagree with defendant's argument that the fact that the witnesses took protective action upon hearing gunshots indicates that they lacked the opportunity, ability, or degree of attention necessary to recognize defendant as one of the shooters. Although defendant is correct that each of the three witnesses testified they took some protective action at the sound of gunfire,

the evidence establishes that Grayer and Hall only did so after seeing defendant shooting a gun. Grayer testified that soon after defendant left the area where he had previously been, someone with him pointed and said, "Look out." Grayer testified that he looked to where the person was pointing, and he saw defendant and another man coming from the alley across the street shooting guns. On cross-examination, Grayer testified that although he did run when the gunshots started, he first looked across the alley before he started running. Similarly, Hall testified that as he was sitting near the alley, defendant and one of his friends "came out of the alley shooting." When Hall saw this, he jumped out of his chair and ducked behind a tree. He testified that he then looked back and saw defendant and the other person pause in the middle of the street and then run toward the other men that were running away and "start shooting." Baggett's testimony also indicates that she saw defendant shooting despite the fact that she took action to protect herself. She testified that when she heard the gunshots, she got onto the floor. When the gunshots stopped, she got up and looked out the window. She testified that when she looked out the window, she "saw Ladarren and another boy shooting." She saw defendant running toward where everybody else had run. She then saw defendant stop and look in the direction of the house where Baggett was looking out the window, and the two of them "looked right at each other." It was for the trier of fact to determine the credibility of these witnesses and the weight to be given to this testimony in determining guilt. We cannot say that this evidence " 'compels the conclusion that no reasonable person could accept it beyond a reasonable doubt.' " *Gray*, 2017 IL 120958, ¶ 36 (quoting *Cunningham*, 212 Ill. 2d at 280).

¶ 28 Significantly, this is not a situation where the witnesses were identifying a stranger. Rather, all three of the witnesses testified that they had spoken to defendant earlier that day. Grayer and Baggett both gave testimony that although they did not know defendant personally, they

recognized defendant as someone who lived in the same neighborhood that they did, and they knew his name. This fact strongly supports the reliability of their identification of defendant as the shooter. *People v. Simmons*, 2016 IL App (1st) 131300, ¶ 99 (witness' testimony that he recognized defendant from having previously seen him in the neighborhood supports reliability of identification); *Joiner*, 2018 IL App (1st) 150343, ¶ 49 (same).

¶ 29 Next, Defendant argues that the reliability of the witnesses' identification of defendant as the shooter is undermined by the fact that Hall's description of the shooter at the scene did not match the description he provided at trial and was not consistent with the descriptions and identifications made by Baggett and Grayer. All three witnesses testified at trial that, when they saw defendant earlier in the day prior to the shooting, he was wearing a white jacket and had a red bandana or handkerchief on his person. The evidence also showed that the only description of the shooters that any of these witnesses had given to police on the day of the incident was Hall's description to Detective Green. At that time, Hall described that one of the shooters "had light skin wearing all black clothing, something red covering his face," and the second shooter had "a dark complexion with twists in his hair, wearing a red hooded sweatshirt that *** somewhat covered his face and black pants."

¶ 30 At trial, Hall described on direct examination that at the time of the shooting, defendant "was dressed in all black with a red bandana." Hall stated, "I saw his face, and he had on a hoodie." On cross-examination, Hall was asked if defendant had anything covering his face. He answered, "The only thing I saw was a hoodie. I didn't see anything covering his face at the time." He then stated, "But he had a handkerchief, because the handkerchief was on the block in the direction he ran." Hall explained that he saw defendant drop the handkerchief. He also described defendant's hairstyle as being "[t]wists." Grayer testified at trial that at the time of the

shooting, defendant had a black top on, which Grayer believed was a hoodie, and had a red bandana over his mouth. He testified defendant's hairstyle then was "[l]ittle braids, small braids that are coming out in different directions." Baggett testified at trial that at the time of the shooting, defendant had on a hoodie and a red bandana over part of his face, but she could still see his eyes. When asked to describe defendant's hairstyle that day, she stated, "Like, long dreads. Like, he was starting to grow dreads."

¶ 31 " '[T]he presence of discrepancies or omissions in a witness' description of the accused do not in and of themselves generate a reasonable doubt as long as a positive identification has been made.' " *People v. Tomei*, 2013 IL App (1st) 112632, ¶ 50 (quoting *People v. Magee*, 374 Ill. App. 3d 1024, 1032 (2007) (citing *Slim*, 127 Ill. 2d at 309)). Such discrepancies or omissions in a description of the characteristics of an offender are not fatal, but they merely affect the weight to be given to the testimony. *Slim*, 127 Ill. 2d at 308. Variances between a witness' trial testimony and pretrial statements raise questions of credibility, which are for the trier of fact to assess in making a determination of guilt. *Id.* A witness is not required to distinguish individual and separate features of a suspect when making an identification. *Id.*

¶ 32 In this case, the trial court specifically stated that it recognized that inconsistencies existed in Hall's testimony concerning the shooter that he observed who he identified as defendant. It then went on to state, "I don't find that his inconsistencies are fatal." The trial court stated that looking at the totality of facts, including the testimony by Grayer and Baggett, it found that the evidence established beyond a reasonable doubt that defendant was present and was one of the shooters. It was properly within the purview of the trial court to determine how the discrepancies between Hall's description in his pretrial statements and the trial testimony affected the credibility of the witnesses and the weight to be given to their testimony. *Slim*, 127 Ill. 2d at 308.

When we review the evidence in the light most favorable to the State on this point, we do not find that the witnesses' testimony identifying defendant as the shooter failed to support a positive identification or was otherwise insufficient. We will not substitute our judgment for that of the trial court regarding the reliability of the identification.

¶ 33 We reject defendant's argument that the weaknesses in the witnesses' identifications of him in this case are similar to those which led to reversal of the defendant's conviction for forcible rape in *People v. Gardner*, 35 Ill. 2d 564 (1966). There, the only evidence tying the defendant to the crime was the victim's identification of him as her assailant and his proximity four blocks from her apartment that night. *Id.* at 571. The victim identified the defendant in the context of a "show up," in which the police brought the defendant alone to the victim's hospital room following the incident. *Id.* at 572. The court described the victim's identification as "weak," noting her description of the assailant immediately after the incident differed from her testimony at trial, including in her descriptions of his clothing, shoes, and sideburns. *Id.* at 571-72. Significantly, the defendant also presented alibi evidence that the court described as "positive and unimpeached," and there was an absence of physical evidence tying the defendant to the rape. *Id.* at 571-73.

¶ 34 Here, unlike in *Gardner*, defendant's conviction did not rest on his identification by a single witness. Three witnesses who had prior familiarity with defendant placed him at the scene and positively identified him as one of the shooters. Defendant was not identified in a "show up," nor was there any other evidence indicating that the witnesses' identification of defendant occurred in some suggestive context. Further, no alibi evidence was presented in this case. The fact that some inconsistency existed in the description of the shooters that Hall gave to police at the scene and the testimony of the witnesses at trial does not make the evidence so unreasonable,

improbable, or unsatisfactory as to create a reasonable doubt of defendant's guilt.

¶ 35 Finally, defendant points out that at least three days had passed between the incident and the time at which the police presented a photo array to the three witnesses and argues that this is a factor that should lead to the conclusion that the identification of defendant as one of the shooters was unreliable. We disagree that this interval of three days negatively affects the reliability of the identification here. *Slim*, 127 Ill. 2d at 313 (interval of 11 days between offense and identification was insignificant); *Simmons*, 2016 IL App (1st) 131300, ¶ 97 (lapse of only one week between shooting and identification in photo array weighed in favor of reliability).

¶ 36 B. Testimony of Detective O'Brien

¶ 37 Defendant's next argument is that the trial court erred in allowing Detective O'Brien to testify about "a secret witness and unidentified others who were responsible for pointing out [defendant] for inclusion in a photo array as a suspect in the shooting." Specifically, Detective O'Brien testified that on September 21, 2015, Officer Cunningham put him in contact with one of Officer Cunningham's sources, and the source wished to remain confidential. Detective O'Brien testified that he spoke with that individual over the phone and they eventually met in person. He testified that after he had a conversation with that individual, he did further investigation in preparation for putting together a photo array. He testified he spoke to tactical officers in the 25th District. He testified that at the conclusion of speaking with the source and the tactical officers, he had an individual that he intended to include in a photo array, which was defendant.

¶ 38 Defendant argues that this testimony by Detective O'Brien reveals that the unidentified source or the unidentified tactical officers in the 25th District accused defendant of having been involved in the shooting at issue. Although defendant acknowledges that the contents of these conversations were not the subject of testimony at trial, he argues that Detective O'Brien's

testimony about these accusers nonetheless constituted hearsay and double-hearsay and violated his constitutional right of confrontation.

¶ 39 The State argues that defendant has forfeited this argument. We agree that defendant has failed to preserve appellate review of this alleged error, because he did not object to this testimony at trial or raise the error in his written post-trial motion. *People v. Reese*, 2017 IL 120011, ¶ 68 (citing *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)). This court may nevertheless address this forfeited issue under the plain error rule if defendant establishes either: (1) that "a clear or obvious error occurred and 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) that "a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *Reese*, 2017 IL 120011, ¶ 69 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007) (citing *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005)). The defendant bears the burden of persuasion under both prongs of the plain error doctrine. *Reese*, 2017 IL 120011, ¶ 69 (citing *People v. Hillier*, 237 Ill. 2d 539, 545 (2010)).

¶ 40 The State argues that defendant has forfeited his argument that this issue may be reviewed under the plain error rule, because defendant failed to make any argument that the plain error rule applies. Thus, the State argues, his forfeiture of the underlying argument on appeal must be enforced. We agree that defendant's brief fails to acknowledge the forfeiture or to make an argument that the issue can be reviewed for plain error. At most, defendant argues in his opening sentence that the trial court "plainly erred" in allowing the testimony at issue by Detective O'Brien. He has not filed a reply brief responding to the State's argument concerning forfeiture. Thus, we conclude that defendant has forfeited application of the plain-error rule by failing to

argue how the rule should apply in this case. *Hillier*, 237 Ill. 2d at 545-46; *People v. Nieves*, 192 Ill. 2d 487, 503 (2000) (single sentence requesting court to employ plain-error rule waived argument that rule applied); *People v. McCoy*, 405 Ill. App. 3d 269, 274 (2010) (defendant's use of the phrase "plain error" in his brief without developing any argument about how rule applied was insufficient to avoid forfeiture).

¶ 41 However, even if we were to consider defendant's argument, we would not find error. In the testimony at issue, Detective O'Brien testified that he had a conversation with Officer Cunningham's confidential source, and after doing so he did further investigation in preparation for putting together a photo array. He testified that he talked to tactical officers in the 25th District. He testified that at the conclusion of speaking with the source and the officers, he had an individual that he intended to include in a photo array, which was defendant. As defendant acknowledges in his brief, "the contents of [the conversations] were not the subject of testimony at trial." As long as the substance of the conversation is not disclosed, it is plainly permissible for a police officer to testify that as part of the course of his or her investigation, the officer had a conversation with another person and thereafter took some action, even if the logical inference to be drawn is that the information received motivated the officer's subsequent conduct. *People v. Cox*, 377 Ill. App. 3d 690, 702 (2007). Such testimony is not considered hearsay, and thus it does not violate a defendant's constitutional right of confrontation. *People v. Risper*, 2015 IL App (1st) 130993, ¶¶ 36-42; *People v. Peoples*, 377 Ill. App. 3d 978, 983-86 (2007) (officer's testimony that he spoke to an individual and thereafter put together a photo array that included defendant was not hearsay and did not violate defendant's right to confrontation).

¶ 42 C. Sentence

¶ 43 Defendant's final argument is that the trial court abused its discretion when it sentenced

him to 39 years in the Illinois Department of Corrections. Defendant, who is 34 years old, argues that this is essentially a life sentence for him. He argues that it is far in excess of what is needed to serve the purpose of sentencing and to be consistent with the constitutional requirement 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. He argues that the sentence does not reflect his rehabilitative potential, the fact that he has not committed serious felonies as an adult, and his family commitments as the father of a teenage daughter. He argues that the trial court did not find beyond a reasonable doubt that he was the shooter who actually caused Urosevic's death, but rather it held him responsible along with another person.

¶ 44 The trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). Such deference is afforded because the trial court is generally in a better position than the reviewing court to determine the appropriate sentence. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). A trial court must base its sentencing determination on the particular circumstances of each case, considering such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). "A reviewing court gives great deference to the trial court's judgment regarding sentencing because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing court, which must rely on the 'cold' record." *Alexander*, 239 Ill. 2d at 212-13 (quoting *Fern*, 189 Ill. 2d at 53). Given the trial judge's opportunity to weigh these factors, "the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently." *Alexander*, 239 Ill. 2d at 213 (quoting *Stacey*, 193 Ill. 2d at 209). Absent an abuse of discretion by the trial

court, a reviewing court may not alter a defendant's sentence. *Alexander*, 239 Ill. 2d at 212. "[A] sentence within statutory limits will be deemed excessive and the result of an abuse of discretion by the trial court where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Stacey*, 193 Ill. 2d at 210 (citing *Fern*, 189 Ill. 2d at 54).

¶ 45 We conclude that the trial court did not abuse its discretion in imposing a 39-year sentence on defendant. The statutory sentencing range for a defendant convicted of first degree murder is a term of imprisonment of between 20 and 60 years (730 ILCS 5/5-4.5-20(a) (West 2014)), and a sentencing enhancement of 15 years is applicable here for commission of the offense while armed with a firearm (*id.* § 5-8-1(a)(1)(d)(i)). Thus, the 39 year sentence imposed is within this statutory range and exceeds the minimum sentence by only four years. This sentence is neither greatly at variance with the spirit and purpose of the law nor manifestly disproportionate to the offense of first degree murder.

¶ 46 In sentencing defendant, the trial court stated that it had taken into consideration the facts of the case and the evidence and argument presented in aggravation and mitigation, including the presentence investigation. The trial court stated that it appreciated hearing from defendant's father, who had apologized to the victim's family and requested leniency on behalf of his son, so that he could continue to be a part of his daughter's life. The record reflects that the trial court heard arguments by defendant's attorney in mitigation that are similar to those defendant urges on appeal, as set forth above. As there is no indication that the trial court failed to consider the mitigating factors cited by defendant, we must presume that the trial court took this evidence into consideration in imposing its sentence. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19.

¶ 47 In finding that a sentence of 39-years was appropriate, the trial court specifically referenced

the number of defendant's prior convictions as set forth in the presentence investigation. Among these was a felony conviction in 2006 for second degree murder, a misdemeanor conviction in 2012 for criminal trespass to land, and felony convictions in 2014 for possession of a controlled substance and aggravated driving under the influence. Given this criminal history of defendant, as well as the facts of this case and the offense at issue, we find no abuse of discretion by the trial court in the sentence that it imposed on defendant.

¶ 48 III. CONCLUSION

¶ 49 For the reasons set forth above, the judgment of the trial court is affirmed.

¶ 50 Affirmed.