2015 IL App (1st) 121766-U
No. 1-12-1766
Order Filed March 13, 2015

SIXTH DIVISION



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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court |
| | ) | of Cook County |
| Plaintiff-Appellee, | ) | |
| | ) | No. 10 CR 433 |
| v. | ) | |
| | ) | |
| CESILIO RAMIREZ, | ) | |
| | ) | Honorable |
| Defendant-Appellant. | ) | Carol A. Kipperman, |
| | ) | Judge Presiding. |

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JUSTICE HALL delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 ***HELD***: The defendant's first degree murder conviction was affirmed. The denial of the defendant's motion to suppress was proper where the defendant was not in custody at the

time he invoked his right to counsel. The defendant's 65-year sentence did not violate the Eighth Amendment. The automatic transfer provision of the Illinois Juvenile Court Act was not unconstitutional. The mittimus would be corrected to reflect one first degree murder conviction.

¶ 2 Following a jury trial, the defendant, Cesilio Ramirez, was convicted of first degree murder in connection with the death of David Jacquez. The trial court sentenced the defendant to 65 years' imprisonment in the Department of Corrections. The defendant appeals.

¶ 3 On appeal, the defendant contends that: (1) his inculpatory statements to police should have been suppressed; (2) his 65-year sentence violated the Eighth Amendment's prohibition against cruel and unusual punishment; (3) the automatic transfer provision of the Juvenile Court Act is unconstitutional; and (4) the mittimus must be corrected. The defendant does not challenge the jury's guilty verdict.

¶ 4 By way of background, on October 13, 2009, David Jacquez (David) was shot by an unknown assailant as he and a friend, Steve Olson (Steve), walked east on 14th Street, in Cicero. Steve called 911. The police and the paramedics arrived and transported David to the hospital. David was in intensive care and on a ventilator until his death on November 25, 2009. The defendant was subsequently arrested and charged with aggravated battery. After David's death, the defendant was indicted on multiple counts of first degree murder.

¶ 5 On October 7, 2011, a hearing on the defendant's motion to suppress statements was held. At the hearing the following evidence was presented.

¶ 6 Cicero police detective Manuel Velazquez testified that on October 13, 2009, the 15-year-old defendant had been brought to the Cicero police station by the Cicero police. The defendant was not handcuffed and, according to the detective, the defendant was free to leave the police station. At 9 p.m., in the presence of the defendant's father, Carlos Ramirez (Mr.

Ramirez), and an unidentified youth officer, Detective Velazquez read the defendant his *Miranda* rights from a preprinted form. The defendant, Detective Velazquez and his partner, Detective Al Pineda, signed the form. The defendant invoked his right to counsel. At approximately 9:14 p.m., the defendant was released to Mr. Ramirez.

¶ 7 Detective Velazquez testified further that on October 14, 2009, at the request of Mr. Ramirez, the police transported the defendant and Mr. Ramirez to the Cicero police station. At 11 p.m., Detective Velazquez read the defendant his *Miranda* rights using the preprinted form. The form was signed by Detective Velazquez, Detective Pineda, the defendant and Mr. Ramirez. An unidentified youth officer was present but did not sign the form.

¶ 8 According to Detective Velazquez, Mr. Ramirez understood English but was more comfortable in Spanish. Although Detective Velazquez spoke Spanish, Detective Pineda served as the translator. The defendant was read his *Miranda* rights and questioned in English.

¶ 9 While he believed the defendant attended high school, Detective Velazquez did not recall asking the defendant if he attended school. According to the detective, the defendant did not request to be alone with Mr. Ramirez at any time during questioning on October 14, 2009.

¶ 10 On cross-examination, Detective Velazquez testified that Mr. Ramirez never indicated that he had problems understanding the English to Spanish translation. At the October 13, 2009, interview, the defendant stated that he understood his right not to speak to the detectives without an attorney present, and he wrote "no" on the form signifying that he would not speak to the detectives without an attorney present. The October 13, 2009 interview with the defendant was then terminated.

¶ 11 Detective Velazquez further testified that he filled out the custodial release of a minor form. The Cicero police department required that a minor be released to a parent or guardian. The detective explained that the bottom of the form was not filled out because there were no charges pending against the defendant.

¶ 12 According to Detective Velazquez, the investigation into the October 13, 2009 shooting incident continued into the next day. The detective interviewed a number of witnesses and conducted photo arrays. At approximately 8 p.m., on October 14, 2009, Detective Pineda received a call from Anita Rodriguez, the defendant's mother. Ms. Rodriguez told the detective that the defendant was at Mr. Ramirez's residence and wanted to come to the police station to talk to Detective Velazquez. At approximately the same time, Cicero police officer Rios received a call from Mr. Ramirez who informed him that the defendant was at his residence and wanted to talk to Detective Velazquez. Officer Rios drove to the Ramirez residence and brought the defendant and Mr. Ramirez to the police station.

¶ 13 Detective Velazquez testified that the defendant and Mr. Ramirez were taken to the second floor interview room, which the detective categorized as a "soft room," meaning that the room was unlocked. The defendant was not handcuffed. Also present were Detective Pineda and Detective Wojtowicz, the youth officer. Detective Velazquez read the defendant his *Miranda* rights. After each right was read to him, the defendant stated that he understood the right and initialed it on the preprinted form. When asked if he was willing to speak to the detective without an attorney present, the defendant wrote "yes" and initialed it. The defendant signed the form as did Detective Velazquez, Detective Pineda and Mr. Ramirez.

¶ 14 Detective Velazquez testified that following the signing of the form, the defendant was questioned for approximately 30 minutes. The detectives then left the room, leaving the

defendant and Mr. Ramirez alone in the unlocked room. Detective Velazquez contacted the felony review unit of the State's Attorney's office. The defendant was placed under arrest at 4 a.m. on October 15, 2009.

¶ 15 On redirect examination, Detective Velazquez testified that the defendant was booked at approximately 4 a.m. on October 15, 2009, after the charges against him were approved. Between the defendant's release on October 13, 2009, and his return to the police station on October 14, 2009, Detective Velazquez spoke to Ms. Rodriguez, and Detective Pineda spoke to Mr. Ramirez. Detective Velazquez told Ms. Rodriguez that if the defendant wanted to talk to him, the detective had more questions for him based on the continuing investigation into the October 13, 2009 shooting incident.

¶ 16 The trial court denied the motion to suppress the defendant's statement to the detectives. The court found that Detective Velazquez was a credible witness. The court further found that while the detectives contacted the defendant's parents about additional questions for the defendant, the court determined that the defendant, through his parents and their separate calls to police, had initiated or reinitiated contact with the police. The court noted that there was credible testimony that Mr. Ramirez was present at both interviews, even though his signature did not appear on the October 13, 2009 preprinted *Miranda* rights form. Based on the totality of the circumstances, the court found that the defendant's statement was voluntary. A summary of the trial evidence is set forth below.

¶ 17 On the morning of October 13, 2009, David and his friend, Steve Olson (Steve) were walking east on 14th Street on their way to visit a friend of Steve's. David was wearing a gold jacket. A green truck turned from 49th Court and proceeded east on 14th Street. As the truck pulled next to the men, Steve observed a female passenger sitting in the back seat.

The female passenger stared at the two men as the truck drove past them and continued to stare at them. Just before turning north on 49th Avenue, the truck stopped, and the female passenger made a hand gesture outside the window. Steve believed the hand gesture was a gang sign. As David and Steve crossed 49th Avenue, Steve noticed an individual in a red hoodie standing 15 feet from the intersection of 14th Street and 49th Avenue. After crossing the intersection of 14th Street and 49th Avenue, David and Steve continued walking for five or six feet when Steve heard two or three gunshots. The two men began run; Steve ran left into a gangway, while David ran straight ahead. After waiting 15 to 20 seconds, Steve looked out but did not see David. The gunshots had stopped, and Steve began walking east down 14th Street to locate David. When Steve reached 14th Street and Cicero Avenue, he looked north and saw David on the ground. Steve was unable to identify the shooter or any of the individuals in the green truck.

¶ 18 According to the testimony of State's witnesses, Rita Quijano (Rita), Maria "Nancy" Cortez (Nancy) and Rogelio Castaneda (Rogelio), Nancy's son, on October 13, 2009, the defendant, Rita and Rogelio were passengers in a green Suburban (SUV) driven by Nancy. As the SUV passed David and Steve, Rita flashed the La Raza gang sign out the window because David was wearing a gold jacket, the color worn by a rival street gang. After turning on 49th Avenue, the defendant asked Nancy to stop and let him out of the SUV, telling her he was going to help his father paint their house. Rita observed the defendant place a handgun in his pants. The defendant and Rogelio exited the SUV. The defendant was wearing a red hoodie and carried a black bandana, which he pulled around his face. After pulling out the handgun, the defendant crossed the street. Rogelio saw the defendant raise his arm holding

the gun and aim it at David, whose back was to him. David turned and began to run. Rogelio heard the gun shots but did not see the defendant shoot David.

¶ 19 After hearing the gun shots, Rogelio ran to his house located on 49th Avenue. The defendant arrived, but Rogelio refused to let him in the house because the defendant had shot at someone. After the defendant told him he had disposed of the gun, Rogelio let the defendant into the house. The defendant went to the bedroom of Vanessa, his girlfriend and Nancy's daughter. When the defendant came out of the room, he was no longer wearing the red hoodie. When Nancy and Rita arrived home, Rita asked the defendant what had happened. The defendant responded by pointing his hand like a gun to his neck.

¶ 20 Alan Pineda testified as follows. On October 13, 2009, he was working as a detective for the Cicero police department. Witnesses described a green SUV leaving the scene of the October 13, 2009, shooting. Following a traffic stop of the green SUV, the defendant and the other occupants of the SUV were brought to the Cicero police station and questioned separately. Detective Pineda and Detective Velazquez spoke briefly with the defendant with Mr. Ramirez present. The defendant then left the police station with Mr. Ramirez.

¶ 21 On October 14, 2009, around 1 p.m., Detective Pineda contacted Mr. Ramirez asking the whereabouts of the defendant because the police had more questions for him. Mr. Ramirez did not know where the defendant was but thought he was staying with Ms. Rodriguez. In the evening hours of October 14, 2009, Mr. Ramirez called the Cicero police station and stated that the defendant wished to come to the station and speak to the police. Mr. Ramirez requested that the police pick the defendant and him up at Mr. Ramirez's residence in Cicero.

¶ 22 Detective Velazquez testified as follows. During the October 14, 2009 interview, the defendant stated that he was a member of the La Raza street gang. Three weeks prior to

October 13, 2009, the defendant had been shot by a member of the Latin Angels street gang; the individual who shot him was wearing a gold jacket. On October 13, 2009, Rita, Rogelio and the defendant were passengers in Nancy's SUV. As the SUV proceeded eastbound on 14th Street, the defendant spotted two men; he recognized one was wearing a gold jacket. The defendant told Nancy to stop so he could go to Soto, a store at the corner of 14th Street and 49th Avenue. The defendant exited the SUV and started toward Soto's. The man in the gold jacket was "mad mugging" the defendant, meaning he was looking angrily at the defendant. After getting within three to five feet close to the man in the gold jacket, the defendant shot him three times. The defendant explained that he was trying to scare the man and that he wanted the man to feel what it was like to get shot. The defendant stated he was wearing a red-hooded sweatshirt and jeans.

¶ 23 Assistant State's Attorney Jennifer Hamelly (ASA Hamelly) testified as follows. At 10 p.m. on October 14, 2009, she received a call from the Cicero police regarding a shooting on October 13, 2009. She was informed that there were witnesses that the police wanted her to interview and who wished to speak to her. She was also informed that the police had someone in custody. ASA Hamelly conducted an interview with the defendant at 1:25 a.m. on October 15, 2009. She introduced herself to the defendant and explained to him that she did not represent him. She also advised the defendant of his *Miranda* rights. Also present were Detective Velazquez and Detective Pineda, Mr. Ramirez and a juvenile officer.

¶ 24 While Detective Pineda translated for Mr. Ramirez, the defendant told ASA Hamelly that three weeks prior to October 13, 2009, he had been shot by a man, whom he believed to be a rival gang member. On October 13, 2009, he saw the same man wearing a gold jacket and walking on 14th Street with another man who was wearing a black ski mask over his face.

As the defendant approached, the man in the gold jacket began "mad mugging" the defendant. The defendant kept walking toward the man. When the defendant was about seven or eight feet away, the man turned away from him. The man in the ski mask ran as the defendant fired three times at the man in the gold jacket. The defendant did not know if the shots hit the man.

¶ 25 The defendant further stated that he was wearing a red hoodie but discarded it prior to arriving at Nancy's house. He did not mention that he wore a black bandana. The defendant hid the gun in a black and gray shoebox in Vanessa's room. According to the defendant, he did not intend to kill the man. He just wanted him to experience what it felt like to be shot.

¶ 26 According to ASA Hamelly, when she arrived at the Cicero police station at 10:45 p.m. on October 14, 2009, the defendant was already in custody. She acknowledged that the defendant was sitting with Mr. Ramirez in an unlocked interview room and was not handcuffed. The defendant refused ASA Hamelly's request to sign a written confession.

¶ 27 The autopsy established that David died from a blood infection due to a gunshot wound to his back. At the scene of the shooting, the police recovered five empty casings. From Vanessa's room, the police recovered a .380 caliber Speer handgun; Speer manufactured Hi-Point weapons. The handgun was in a shoebox which also contained a black bandana. Expert testimony established that the five casings found at the scene came from a Hi-Point firearm and that the bullet found in David's body came from a Hi-Point firearm.

¶ 28 After the State rested its case, the defense called Detective Pineda, who testified as follows. When the defendant and Mr. Ramirez arrived at the Cicero police station late in the evening on October 14, 2009, the defendant was not in custody. The defendant was not in custody at 11:05 p.m., when he and Detective Velazquez questioned him. Detective Pineda

identified a Cicero Police lockup form for the defendant, dated October 14, 2009, at 2215 hours. On the form, the lockup facility was shown as the Cicero lockup and C133 cell number. The defendant's height and weight were also indicated on the form. Detective Pineda acknowledged that it was not standard practice to document a witness's height and weight.

¶ 29 Questioned by the State, Detective Pineda maintained that the defendant was not in the Cicero police station lockup at 22:15 hours (10:15 p.m.) on October 14, 2009. The time on the lockup form indicated the time the defendant had arrived at the police station. The remainder of the information was filled in after the defendant made a statement about his involvement in the shooting and placed under arrest. The lockup form also set forth the charges that were approved by ASA Hamelly at 4:36 a.m. on October 15, 2009.

¶ 30 After he had been admonished by the trial court, the defendant exercised his right not to testify. The jury found the defendant guilty of first degree murder. The jury further found that the defendant had personally fired the gun that killed David. The defendant's motion for a new trial was denied.

¶ 31 At the sentencing hearing, in aggravation, the State presented the testimony of David's mother, two of David's other relatives, and Steven Olson. According to the family witnesses' testimony, David had been a wonderful uncle to his nieces and nephews, and they explained how hard it was to watch David die a slow and painful death from the shooting. Steve testified about his friendship with David, and how helpful David was to his family and friends. According to the probation department investigative report, the defendant's prior criminal history included curfew violations, breaches of the peace, cannabis possession and disobeying a police officer. When arrested in connection with the present offense, the

defendant was on probation for two aggravated batteries. As a condition of his probation, he was not to be involved in any gang activity. The State requested that the trial court sentence the defendant to a term of natural life imprisonment.

¶ 32 In mitigation, defense counsel pointed out that the defendant was only 15 at the time of the shooting. The defendant admitted his guilt in the two aggravated battery cases. From the time he was placed on probation, May 2009, and the shooting in October 2009, there was no indication that the defendant received any of the corrective services he should have been receiving. The defendant attended one year at Morton Grove High School and attended Hillside Academy for a few weeks prior to his arrest. While in juvenile detention, the defendant had attended school. However, his ability to read and write was poor. Defense counsel also pointed out that the defendant's parents had relocated to Texas, and neither of them was present for the defendant's trial. While there were no reports of physical or emotional abuse or drug or alcohol abuse in the home, the defendant reported that his father was always working and his mother was busy. His parents maintained separate residents. As a result, he had little parental supervision. His older brother was a member of the La Raza street gang. Defense counsel requested that the trial court impose the minimum sentence of 20 years for murder and 25 years, the minimum firearm enhancement penalty applicable in this case.

¶ 33 The trial court reviewed the statutory mitigation factors but determined that none of those factors was present. In aggravation, the trial court considered the defendant's prior history of delinquency and that the sentence of imprisonment was necessary to deter others from committing the same crime. The trial court then stated as follows:

"Basically taking a look at the factors in mitigation and in aggravation, the Court would find that the one mitigating factor which the attorney mentioned which is not listed here is his young age, that he was 15 at the time this offense was committed.

On the other hand, when I consider not only the murder which occurred here but the unusual circumstances of the victim's survival under horrible conditions for the two months before he died, when I consider the love of his family and their loss in this case, when I consider the gang activity here, I put that all together, the Court would find that the minimum sentence in this case is not the appropriate sentence even given his youthful age at the time that he committed it. Taking into account possibly that - - the possibility of rehabilitation and again considering his age, on the other hand, considering a deterrent to the public that people cannot just go around shooting people willy-nilly because they are in a gang, for whatever reason they feel they have to shoot somebody and kill them, and for the protection of the public from these types of crimes, the Court feels that the sentence of 65 years would be appropriate, and that will be the sentence."

¶ 34 The defendant's motion for reconsideration of his sentence was denied. This appeal followed.

¶ 35 ANALYSIS

¶ 36 I. Motion to Suppress

¶ 37 The defendant contends that the trial court erred when it denied his motion to suppress his statement to police. He points out that he had invoked his right to counsel during the October 13, 2009 interview. By questioning him on October 14, 2009, without an attorney present for him, the defendant maintains that the Cicero police violated the rule set forth in

*Edwards v. Arizona*, 451 U.S. 477 (1981). The State responds that the defendant was not in custody when he was reinterrogated on October 14, 2009, and that even if he was in custody, the trial court found that the defendant reinitiated contact with the police. Finally, the State submits that even if the defendant's oral statement should have been suppressed, the error was harmless. See *Arizona v. Fulminante*, 499 U.S. 279 (1991) (admission of an involuntary confession is subject to the harmless error rule).

¶ 38 A. Standard of Review

¶ 39 In reviewing a trial court's ruling on a motion to suppress, the court is presented with a mixed question of law and fact. *People v. Pittman*, 211 Ill. 2d 502, 512 (2004). The trial court's findings of fact will be upheld unless they are against the manifest weight of the evidence. *Pittman*, 211 Ill. 2d at 512. However, the reviewing court may undertake its own assessment of the facts in relation to the issues and may draw its own conclusions in deciding what relief should be granted. *Pittman*, 211 Ill. 2d at 512. The ultimate question of whether the evidence should be suppressed is reviewed *de novo*. *Pittman*, 211 Ill. 2d at 512. Our review includes not only the evidence presented at the motion to suppress hearing but the evidence presented at trial. *People v. DeLuna*, 334 Ill. App. 3d 1, 11 (2002).

¶ 40 B. Discussion

¶ 41 In *Edwards*, the United States Supreme Court held that when an accused invokes his right to counsel during a custodial interrogation, he may not be further interrogated in the absence of counsel unless "the accused himself initiates further communication, exchanges, or conversations with the police." *Edwards*, 451 U.S. at 485. In order for the rule in *Edwards* to apply, the defendant must be in custody when he is interrogated. "In every case involving *Edwards*, the courts must determine whether the suspect was in custody when he requested

counsel and when he later made the statements he seeks to suppress." *Maryland v. Shatzer*, 559 U.S. 98, 111 (2010). For *Edwards* to apply in this case, the defendant must have been in custody both on October 13 and October 14, 2009.

¶ 42 The parties have concentrated their arguments on whether the defendant was in custody October 14, 2009, when he was interrogated by the detectives and made the inculpatory statement. Nonetheless, our examination of the record reveals that the defendant was not in custody on October 13, 2009, and therefore, the fact that the defendant invoked his right to an attorney does not implicate the rule in *Edwards*.

¶ 43 The defendant did not make a statement when he was questioned by Cicero police on October 13, 2009. Nonetheless, we find our supreme court's discussion in *People v. Slater*, 228 Ill. 2d 137 (2008), of the relevant factors in determining whether a statement was made in a custodial setting instructive as to whether the defendant was in custody on October 13, 2009. The factors included "(1) the location, time, length, mood, and mode of the questioning; (2) the number of police officers present during the interrogation; (3) the presence or absence of family and friends of the individual; (4) any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused." *Slater*, 228 Ill. 2d at 150.

¶ 44 The reviewing court examines and weighs the various factors, and then makes an objective determination as to whether under the facts presented, " 'a reasonable person, innocent of any crime' would have believed that he or she could terminate the encounter and was free to leave." *Slater*, 228 Ill. 2d at 150 (quoting *People v. Bragg*, 209 Ill. 2d 492, 506 (2003)). We review the facts in this case in order to make that objective determination.

¶ 45 The record reveals that the October 13, 2009, questioning of the defendant took place around 9 p.m. in a "soft room," meaning that it was unlocked.[1] Detective Velasquez and Detective Pineda were present as was Mr. Ramirez, the defendant's father, and a youth detective.[2] The defendant was not handcuffed or otherwise physically restrained. There is no indication that the detectives displayed their weapons. The interview lasted approximately 14 minutes and was terminated when the defendant invoked his right to counsel.

¶ 46 The fact that the defendant was given his *Miranda* rights does not establish that he was in custody on October 13, 2009. "A custodial situation cannot be created by the mere giving of *Miranda* warnings." *People v. McDaniel*, 249 Ill. App. 3d 621, 633 (1993). While the defendant was not expressly told he was free to leave the police station, when the defendant invoked his right to counsel, the interview was terminated. Finally, the Cicero police department required that the defendant be released to the custody of Mr. Ramirez only because of his status as a minor.

¶ 47 Having considered the relevant circumstances, we determine that the defendant was not in custody when he was questioned by the detectives on October 13, 2009. Because the defendant was not in custody on October 13, 2009, the rule in *Edwards* does not apply in this case. Therefore, we need not address whether the defendant was in custody when he was questioned by police on October 14, 2009, or the State's argument that any error in denying

[1] Detective Velazquez testified that on October 14, 2009, the interview with the defendant took place in the same room as the October 13, 2009 interview.

[2] Mr. Ramirez's signature did not appear on the October 13, 2009, *Miranda* form. However, at the hearing on the motion to suppress, Detective Velazquez testified that Mr. Ramirez was present, and the trial court found Detective Velazquez to be a credible witness.

the motion to suppress was harmless. We conclude that the denial of the defendant's motion to suppress his statements was proper.

¶ 48 II. Sentencing

¶ 49 The defendant contends that his 65-year sentence violates the Eighth Amendment's prohibition against cruel and unusual punishment. U.S. Const., amend. VIII. The defendant relies on the Supreme Court's decision in *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455 (2012). The defendant argues that *Miller* prohibits the imposition of a lengthy prison sentence on a juvenile without considering the juvenile's age or other youthful factors. We disagree.

¶ 50 Before the Supreme Court in *Miller* were two cases involving 14-year-old defendants, each of whom had been convicted of murder and received a sentence of life imprisonment without the possibility of parole. The Court in *Miller* held that the eighth amendment forbids a sentencing scheme which mandates life imprisonment without parole for juvenile offenders, even in homicide cases. *Miller*, 132 S.Ct. at 2469. However, the Court in *Miller* did not foreclose a life sentence for a juvenile in a murder case; rather, the sentencing court must "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Miller*, 132 S.Ct. at 2469.

¶ 51 The Court in *Miller* identified the problems with imposing a mandatory life sentence on a juvenile offenders as follows:

> "Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features – among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him – and from which he cannot usually

> extricate himself – no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offence, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth – for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys." *Miller*, 132 S.Ct. at 2468.

¶ 52 The trial court declined the State's request to sentence the defendant to natural life without parole and instead imposed a term-of-years sentence. The parties do not dispute that the defendant's sentence falls within the statutory range for first degree murder. See 730 ILCS 5/5-8-1(a)(1)(a) (West 2012) (nonextended-term for first degree murder is 20 to 60 years). The defendant received a 40-year sentence for first degree murder, 20 years more than the minimum but 20 years less than the maximum. For personally discharging the firearm that killed David, the trial court imposed a 25-year sentence, the minimum enhancement. See 730 ILCS 5/5-8(a)(1)(d)(iii) (West 2008).

¶ 53 The defendant argues that the imposition of a 65-year sentence on a 15-year-old is a *de facto* natural life sentence. Yet, nothing in *Miller* prohibits a lengthy term of imprisonment for a juvenile. In *People v. Davis*, 2014 IL 115595, our supreme court recognized that, under *Miller* "[a] minor may still be sentenced to natural life imprisonment without parole so long as the sentence is at the trial court's discretion rather than mandatory." *Davis*, 2014 IL 115595, ¶ 43.

¶ 54 Defense counsel presented an extensive argument in mitigation. Counsel stressed that that the defendant had an unsupervised home life and that his parents had relocated and had

not returned for his trial. A trial court is presumed to have considered any evidence of mitigation before it. *People v. Croft*, 2013 IL App (1st) 121473, ¶ 14. The trial court did consider the defendant's age as a mitigating factor. On the other hand, the factors in aggravation included the defendant's history with the criminal justice system, the circumstances of the offense, the suffering David endured as a result of the shooting and that the defendant fired the fatal shot.

¶ 55 In *People v. Patterson*, 2014 IL 115102, our supreme court cautioned that "both this court and the United States Supreme Court have closely limited the application of the rationale expressed in *** *Miller*, invoking it only in the context of the most severe of all penalties." *Patterson*, 2014 IL 115102, ¶ 110. In this case, the trial court was not mandated to and did not impose a sentence of life imprisonment without parole. The defendant's sentence was within the statutory limits and was not the maximum the court could have imposed. After hearing evidence in mitigation and specifically considering the defendant's age as a mitigating factor, the court imposed a discretionary sentence that, while lengthy, was not life imprisonment without parole. As the court has not imposed the most severe penalty available in this State, life imprisonment with our parole, *Miller* is not applicable in this case. In light of our supreme court's statement in *Patterson*, we may not extend the rule in *Miller* to this case.

¶ 56 III. Mandatory Transfer Provision

¶ 57 The defendant contends that the mandatory transfer provision of the Juvenile Court Act of 1987 (705 ILCS 405/5-130 (West 2010)), automatically transferring certain minors from the jurisdiction of the juvenile court to the adult criminal court, is constitutionally invalid.

¶ 58 Our supreme court considered the same arguments raised by the defendant in *Patterson*, 2014 IL 115102. The court rejected the constitutional challenges to the mandatory juvenile transfer provision. See *Patterson*, 2014 IL 115102, ¶¶ 92-111. However, the court expressed its concern over the lack of any judicial discretion in the transfer process and urged the General Assembly to review the statute in light of the "current scientific and sociological evidence indicating a need for the exercise of judicial discretion in determining the appropriate setting for the proceedings in these juvenile cases." *Patterson*, 2014 IL 115102, ¶ 111.

¶ 59 IV. Correction of the Mittimus

¶ 60 The defendant contends and the State agrees that the mittimus, which reflects six convictions for first degree murder, must be corrected. Pursuant to Illinois Supreme Court Rule 615(b) (1) (eff. Aug. 27, 1999), we modify the mittimus to reflect one conviction for first degree murder and 65-year sentence.

¶ 61 CONCLUSION

¶ 62 The defendant's conviction and sentences are affirmed.

¶ 63 Affirmed; mittimus modified.