FOURTH DIVISION
September 18, 2014

No. 1-12-1741

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	09 CR 9349
	)	
KEVIN WATSON,	)	Honorable
	)	Kevin M. Sheehan,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Taylor concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to sustain defendant's conviction of first-degree murder. Defendant's 60-year sentence is affirmed where the trial judge took into consideration defendant's age, as well as all other mitigating and aggravating factors, when determining an appropriate sentence.

¶ 2 Defendant Kevin Watson was convicted of first-degree murder in the shooting death of Tommie Williams following a jury trial held in the Circuit Court of Cook County. The jury

found Watson personally discharged the firearm that proximately caused Williams' death. Watson was sentenced to 35 years' imprisonment for his first-degree murder conviction, and an additional 25 years' imprisonment for personally discharging the firearm that proximately caused Williams' death, for a total 60-year sentence. Watson now appeals his conviction and sentence.

¶ 3 BACKGROUND

¶ 4 Tommie Williams was shot and killed on April 2, 2009. At the time of his death, Williams was 18 years old. On April 24, 2009, police arrested defendant Kevin Watson, who was then 15 years old, charging him with several counts of first-degree murder for the shooting death of Williams.

¶ 5 At the trial, the state presented four occurrence witnesses in its case in chief: Gerald Baker, Tommy Robinson, William "Bud" Jones and Eugene Ali. When they testified at trial, the occurrence witnesses testified generally that they could not identify Watson as the person who shot Williams. However, the trial court determined that the testimony of the occurrence witnesses at trial was inconsistent with statements the witnesses had given in earlier statements and testimony before the grand jury. The trial court admitted the prior statements and grand jury testimony as substantive evidence.

¶ 6 Gerard Baker testified that he met Watson in grammar school and had known him for several years. On April 2, 2009, Baker took the CTA bus to visit his aunt on 61st and Drexel. After exiting the bus, Baker ran into a group of about four or five guys that he knew from that area. The group included Watson and Jovan Blue. Several of the guys, including Baker, Watson, Davead McIntyre and Juan Ward, then went to McIntyre's apartment on 62nd and Cottage Grove. Once inside McIntyre's apartment, Baker, McIntyre, Ward and Watson played an X Box video game in McIntyre's bedroom for a few hours. Baker testified that he did not

recall if anyone received a phone call while they were playing video games. Baker acknowledges that he spoke with ASA Maureen Reno and Detective Maas on April 18, 2009 with his step father present, and that his statement was typed up by the ASA and signed by him in various places; however, Baker testified that he did not remember telling ASA Reno that while they were playing video games, Watson ran to the window and looked outside before leaving the apartment as stated in the written statement.

¶ 7 Baker further testified that at some point, Watson walked out of McIntyre's room and left the apartment. Baker denied telling ASA Reno that Watson ran out of the room, down the stairs and out of the house. After Watson left the room, Baker testified that he heard several gunshots. Baker went to the window, but he could not recall what he saw. Baker denied telling ASA Reno that upon looking out the window after hearing the gunshots he saw Watson running up Cottage Grove towards 62nd Street. Baker further denied telling ASA Reno that while Watson was running he was crouched over holding his arms close to his body.

¶ 8 Baker testified that he could not remember what Watson was wearing on April 2, 2009, and that he did not remember telling ASA Reno that Watson was wearing a dark-colored hoodie. While Baker did not know if McIntyre or Ward were associated with gangs, he testified that the school they all attended was in a "gang-related" area and they all hung out with members of the Gangster Disciples. Baker testified that the Gangster Disciples had problems with the P-Stones. Baker would not say that Williams hung out with gang members, but he did say that Williams was on the side of Cottage Grove where there was a different gang that was not the Gangster Disciples. Baker further testified that "hooks" were the Black P-Stones. He testified that he did not remember if anyone referred to the "hooks" while they were playing video games in McIntyre's apartment on April 2, 2009, and further denied telling ASA Reno that McIntyre told

himself, Watson and Ward that there were "hooks" outside. Baker testified that he did not remember Watson telling him that Williams was outside while they were playing video games, and he did not remember telling ASA Reno the same.

¶ 9 On cross-examination, Baker testified that he heard shots while he was in McIntyre's apartment and then he left the apartment alone. He testified that he heard several shots and could not remember telling Detective Maas whether it was two or three shots. Baker testified that he remembered discussing what Watson was wearing with Detective Maas on April 18th, but that he did not remember telling him that Watson was wearing a purple hoodie with yellow on the hood. According to Baker, several other gangs were actively involved in violence in the area of 61st and Cottage Grove other than the Gangster Disciples and Black P-Stones, including the Mickey Cobras and the Vicelords. Baker did not know that Williams was a member of the Black P-Stones. After Baker heard the shots and looked out the window, he saw everybody running and scattering in every direction. Baker testified that he did not type the statement that he gave to ASA Reno and that he did not read it word for word before he signed it.

¶ 10 On redirect examination, Baker testified that ASA Reno never read the written statement to him, and that he did not make any of the edits that were on the statement. Baker did testify, though, that he initialed all the edits, signed the statement and reviewed it generally.

¶ 11 ASA Reno testified about the statement Baker gave to her. ASA Reno testified that she met with Baker on April 18, 2009 and took his handwritten statement. ASA Reno read several portions of the handwritten statement to the jury, which indicated that Baker told her: Watson was wearing a dark-colored hoodie on the day of the shooting; McIntyre told Baker, Watson and Ward that there were "hooks" outside while they were playing video games; Watson told Baker that he saw Williams outside; Watson ran out of the apartment just before the shooting; from

McIntyre's bedroom window, Baker saw Watson running southbound on Cottage Grove after the shooting; and, while running, Watson was holding his arms close to his body.

¶ 12 Timothy Robinson testified that his prior felony convictions consisted of possession of a controlled substance with intent to deliver in 2008 and possession of cannabis in 2010. Robinson testified that he was currently on probation, and that no one threatened him or offered him anything in exchange for his testimony. In April 2009, Robinson lived with his mom, dad and sister at 6119 South Cottage Grove Avenue. On the date of the shooting, at about five o'clock in the afternoon, he was at his home "up under the porch" on the first floor getting high and talking to girls who were inside on the first floor. While Robinson was out on the first floor porch, he saw William Jones, also known as "Bud", "Manny" and "Debo" sitting in chairs facing the parking lot. Robinson testified that he saw Williams, who he knew, standing by a gate in the parking lot talking with Jones. Robinson did not speak with Williams or Jones that day. As he was smoking, he heard gunshots and saw everyone running. Robinson testified that he hid behind a wall when he heard the gunshots, and when he came out he saw Williams collapse on Cottage Street.

¶ 13 Robinson further testified that on April 16, 2009, police arrived at his apartment and took him to Area Two where he had an interview with Detective Maas and answered what he knew about the murder of Williams. Robinson testified that he did not remember telling Detective Maas the following facts: that he saw a "shorty" wearing a purple-colored hoodie skipping through the lot at 6119 South Cottage Grove westbound; that this individual passed him and headed toward Williams; that this individual had his hand in his pocket; and that after the shots he saw this individual run south on the east side of Cottage Grove. Robinson testified that Detective Maas showed him a photo array and asked him if he saw Watson in the picture. He

did, and pointed him out. He then pointed out Watson in court. He stated that prior to April 2, 2009 he had seen Watson around. Robinson denied identifying Watson in the photo array as the person who walked passed him with his hand in his pocket, approached Williams from behind, and then ran southbound down Cottage Grove towards 62nd Street after the shots were fired. Robinson was held overnight until April 17, 2009, when he made a statement to ASA Ashley Moore.

¶ 14 Although Robinson admitted that he signed all the pages of ASA Moore's written statement, Robinson denied telling ASA Moore that he saw a boy in a purple hoodie skipping down a sidewalk towards his house, and denied telling ASA Moore that he recognized the boy as Watson. He could not remember telling ASA Moore that Watson was smiling and that he had one of his hands inside his hoodie. He further testified that he did not remember telling ASA Moore that he heard gunshots a few seconds after he saw Watson skipping passed him, or that he saw Watson running down Cottage Grove Street after hearing the gun shots. Robinson stated that ASA Moore went over the handwritten statement with him before he signed it.

¶ 15 Robinson testified that on April 25, 2009, the Chicago police had Robinson return to Area Two for a line-up. Robinson identified Watson in the line-up, but he denied indentifying Watson as the person approaching Williams and running south on Cottage Grove after hearing gunshots.

¶ 16 Robinson acknowledged testifying before a grand jury on April 27th, and speaking to ASA Christa Peterson before testifying that day. After being read excerpts from his grand jury testimony, Robinson denied that he told the grand jury that he saw Watson walk from the back of the apartment toward the gate where Williams and Jones were standing, and that he saw Watson with one of his hands in his pocket. Robinson further testified that he could not remember telling

the grand jury that Watson was wearing a purple, dark colored hoodie, or that Watson was not with anyone else, or that after he heard gunshots, he saw Watson running towards 62nd on Cottage Grove.

¶ 17 On cross-examination, Robinson testified that when he was "up under the porch," he had been getting high for a while. At the time he heard the gunshots, he was talking with girls and his back was to the parking lot, so he was unable to see what was going on behind him. After the gunshots, he saw a lot of people running in all directions. He did not know that Williams was a Black P-Stone, but testified that there were a lot of gangs in the area. Robinson testified that he did not speak with the police until they came looking for him on April 16th. He stayed overnight at the police station, and the statement that he gave the ASA was made on the 17th. He could not remember if he read over the statement word for word. On redirect examination, Robinson testified that he told Detective Maas, ASA Moore and ASA Peterson that he had been smoking marijuana at the time of the shooting.

¶ 18 Detective Maas testified regarding his conversation with Robinson on April 16th. Detective Maas testified that Robinson told him Watson was wearing a purple hoodie and skipping through the parking lot towards Williams with one of his hands in his pocket, and that after he heard the gunshots he saw Watson running south on Cottage Grove. Detective Maas testified that Robinson never told him that he was smoking marijuana on the day of the shooting. Detective Maas testified that he was present for the photo array on April 16th and for the line-up on April 24th, and that Robinson identified Watson as the person he saw run up behind Williams at the time of the shooting, but that he didn't see Watson shoot. Detective Maas was also present when Robinson spoke with ASA Moore the following day.

¶ 19 ASA Moore testified that she took Robinson's handwritten statement on April 17th. ASA

Moore read several portions of the statement, which stated that Robinson: saw Watson skipping down the street while wearing a purple hoodie; Watson was smiling and one of his hands was in the pocket of his hoodie; Watson was moving towards Williams; he turned his back from Watson and continued talking to girls when he heard gunshots a few second later and subsequently saw Watson running down Cottage Grove towards 62nd Street. ASA Moore testified that Robinson never told her that he had been smoking marijuana that day.

¶ 20 ASA Peterson testified regarding Robinson's testimony before the grand jury on April 27, 2009. ASA Peterson read portions of the grand jury testimony, in which Robinson testified: he saw Watson walking toward the gate where Williams was standing; Watson was wearing a purple colorful hoodie; Watson was alone while walking towards Williams and had one hand inside his hoodie pocket; and that he did not see Williams and Jones running, but he saw Watson running on Cottage Grove towards 62nd Street.

¶ 21 William Jones testified that on April 2, 2009, he was in the area near 60th and Cottage Grove visiting his grandmother. While visiting, he went out to the parking lot on 61st and Cottage Grove to buy loose cigarettes when he saw Robinson. He did not speak with Robinson at the time, but spoke to a girl who was standing near Robinson. Jones then saw Williams and began talking to him first by the porch and then over by the gate. Jones stated that he knew Williams since he was a little boy. Jones testified that he was standing side by side with Williams and was about to pass Williams a cigarette when he heard two or three gunshots. As soon as he heard the gunshots, which sounded very close to him, everyone ran in separate directions, including himself. He testified that he did not see the shooter, did not see anyone approach Williams from behind or point a gun at him. Jones was with Williams running across the street when he turned back and heard Williams say "Bud, I'm shot" before collapsing.

¶ 22 After he saw Williams collapse, Jones testified that he ran to Williams' grandmother's house to tell her what happened, and returned to the parking lot with Williams' grandparents. Jones testified that when they returned, Williams was conscious for a little bit. Jones stated that he saw the police arrive, but that he did not approach them because he had already spoken to Williams' family, he was shook up, and he had just gotten out of prison after serving six years for a drug conspiracy felony. Jones had also previously served two years for possession of a controlled substance back in March 2004.

¶ 23 Jones testified that the police questioned him on April 16th after they grabbed him while he was walking down the street and brought him to Area Two. At Area Two, Detective Bush showed him a photo array, but first asked Jones if he knew Watson. Jones told Detective Bush that he did not know Watson, so Detective Bush showed him a photo of Watson. Detective Bush then asked him if the photo was of Watson, and Jones told him that it was because he had just told him it was and because Watson's name was on the photo. Jones then signed the photograph of Watson. Jones testified that he also looked at a line-up on April 24th, where he was asked to identify Watson. Jones testified that because he had been shown four or five pictures of Watson previously, he was able to pick Watson out of the line-up.

¶ 24 On April 17, 2009, Jones testified that he spoke with ASA Lori Rosen, while Detective Bush was present. ASA Rosen wrote and typed up Jones' statement and then went over it with him, allowing him to make any changes. Jones testified that it was his signature on each page of the statement. Jones denied telling ASA Rosen that he knew Watson as "Little Kevin" and that he had seen him in the neighborhood a few times. Jones also denied telling ASA Rosen that he saw Watson point a gun at Williams from ten feet away, and that Watson was wearing a dark hoodie at the time, but that the hood did not cover his face. Jones further denied telling ASA

Rosen that Watson ran south down the sidewalk on Cottage Grove while trying to hide the gun by clutching it close to his body.

¶ 25 Jones acknowledged that he testified before a grand jury on April 30th. Jones denied testifying before the grand jury that he knew Watson prior to the day of the shooting. When read excerpts from the grand jury testimony, Jones acknowledged testifying that he saw Watson walk up behind Williams, point a gun at his head from ten feet away, and that he saw fire come out of his gun. Jones also acknowledged that he previously testified that Watson was wearing a black hoodie at the time of the shooting.

¶ 26 On cross-examination, Jones stated that his prior felony convictions were two cases of delivery of a controlled substance, two cases of possession of a controlled substance and one criminal drug conspiracy case. Jones testified that he did not know Watson in April 2009, and that he never saw the face of the person who shot Williams. He further testified that there were about 15 other people in the parking lot at the time of the shooting and that he did not know Williams was in a gang. Jones also explained that when he stated that the police "grabbed" him off the street, they handcuffed him and put him in the back seat of their car and brought him to the police station.

¶ 27 ASA Rosen testified regarding the statement she took from Jones. She read portions of the statement to the jury, which indicated that Jones told her that: as Jones and Williams approached the gate, he looked over his left shoulder and then heard gunshots; that Jones saw someone who he now knows is Watson pointing a gun at Williams' back from about ten feet away; Jones heard gunshots, which sounded like they came from a revolver; and after hearing the gunshots, Jones saw Watson running south on Cottage Grove.

¶ 28 ASA Peterson initially met with Jones on April 27th, but presented him to the grand jury

on April 30th. ASA Peterson read portions of Jones' grand jury testimony wherein he stated: Jones knew someone by the name of "Little Kevin" and had seen him twice playing basketball before the shooting; Jones and Williams were talking shoulder to shoulder by the gate; Jones turned to look at Williams and saw Watson walk up behind him and point a gun at his back from ten feet away; Jones saw fire jump out of the gun; and Watson was wearing a black hoodie.

¶ 29 Detective Maas testified that he was present on April 18th when Jones spoke with ASA Rosen, and on April 24th when Jones identified Watson in a line-up. Detective Maas testified that Jones identified Watson as the person he saw point a gun at Williams before he heard gunshots.

¶ 30 Detective Bush testified that Jones was initially considered a suspect in the case. Once at the station, Jones gave Detective Bush the name of someone he thought might be involved in the shooting and then identified Watson from a line-up. Detective Bush denied showing Jones pictures of Watson before showing him the photo array.

¶ 31 Eugene Ali testified that he had two prior felony convictions for possession of a controlled substance in 2002 and 2003. On April 2, 2009, Ali testified that at about five o'clock in the evening he was walking to his friend Shirley Martin's apartment, which was at 62nd Street and Cottage Grove. Shirley lived with her daughter and her daughter's three children. Ali had known one of the children, 15-year old Virgil Martin, for a long time. Ali had also known Watson for a long time. While walking over to Shirley's apartment, Ali heard gunshots. When he arrived at Shirley's apartment he heard a couple of excited boys, one who he thought to be Virgil. Ali stayed outside of the apartment and had a beer because there were a bunch of kids inside. Ali was not sure who he heard talking outside, but he thought it might have been Virgil. When Shirley's brother came outside, Ali walked home.

¶ 32 Ali testified that he spoke to the police on April 16, 2009, and told them that about three or four minutes after he heard the gun shots, he saw Watson and Virgil run passed him. He testified that he saw them run into the apartment complex at 62nd Street and Cottage Grove, and that they appeared a little excited. He testified that they were running from north to south on Cottage Grove. While the boys were talking, he thought he heard one of them, possibly Virgil, ask "what did we do?"; however he was not sure about this.

¶ 33 Ali then acknowledged that he testified before a grand jury on April 27, 2009. After reading Ali's grand jury testimony wherein Ali stated that he heard Watson state "what the hell did I do?", Ali testified that he didn't recall giving that answer, but that he must have if that was what the transcript read. Ali then testified that when he saw Watson and Virgil, he thought they were breathing heavily, but he did not recall telling the grand jury that Watson was perspiring. Ali conceded that he must have stated that Watson was very nervous since that was what the grand jury transcript read.

¶ 34 Ali also testified that on April 28, 2009, Detective Maas showed him a photo array and he identified Watson in the photo. Ali also participated in a line-up, where he identified Watson as one of the people he saw after the shooting. When Ali was shown the photo of the line-up in court, he was unable to see it because it appeared blurry to him.

¶ 35 On cross-examination, Ali testified that he had been drinking and using drugs on the day of the shooting, that he did not see the shooting, that he never saw Watson with a gun or throwing a gun, and that many people were running after the shooting.

¶ 36 On redirect examination, Ali testified that he did not tell Detective Maas or ASA Peterson that he was on drugs the day of the shooting because they did not ask. He also testified that he used drugs on the morning of his grand jury testimony.

¶ 37 ASA Jodi Peterson testified that she presented Ali to the grand jury on April 27, 2009. ASA Peterson read portions of his grand jury testimony to the jury, which indicated that Ali previously testified that he thought Watson was sweating and nervous after the shooting occurred, and that he was pretty sure he heard Watson say "Man, what the hell did I do? Man, what the hell did I do?" ASA Peterson also testified that she did not believe Ali was under the influence of drugs or alcohol at the grand jury proceeding.

¶ 38 Detective Maas testified that he was present when Ali identified Watson from a line-up, and Ali identified Watson as the person he saw running into Shirley's apartment after the shooting.

¶ 39 Detective Emmett McClendon testified as a gang expert. Detective McClendon testified that the Gangster Disciples had several factions operating around 61st and Cottage Grove at the time of the shooting, including Rock Creek, Dro City, and Young Money Boys. The Black P-Stones had factions in the same area, such as the Crank Town Stones. He testified that the word "hook" was a derogatory term for a P-Stone.

¶ 40 Detective McClendon further testified that there are two categories for all gang members, People (those under the five-point star) and Folks (those under the six-point star). The Gangster Disciples fall under the six-point and the P-Stones and Vice Lords fall under the five-point star. If someone had a tattoo of a five-point star, that would indicate to Detective McClendon that that person is a P-Stone. Detective McClendon had never encountered Vice Lords or Mickey Cobras in the area of 61st Street and Cottage Grove.

¶ 41 The parties stipulated that if called to testify, a forensic pathologist would state that she performed an autopsy of Williams, and that Williams had a five-point start tattoo. The cause of death was a gunshot wound to the back, and the manner of death was homicide.

¶ 42 The defense called one witness in its case, Davead McIntyre. McIntyre testified that he knew Watson from school and grew up with Williams. On April 2, 2009, McIntyre had a half day of school and went to play basketball with Ward and Baker after school was out. After basketball, the boys went to McIntyre's apartment to play video games. While playing, he heard three or four gunshots and looked out the window. He testified that he did not see Watson when he looked out the window. McIntyre testified that he did not see Watson at all on April 2, 2009, and the last time he had seen him was in March 2009. About a week after the shooting, the police came to McIntyre's apartment and took him to Area Two.

¶ 43 On cross-examination, McIntyre testified that when he looked out his window after hearing the gunshots, he saw the shooter running and described the shooter as six feet tall, light skinned, heavy set, black hair, and was wearing purple. McIntyre further testified that neither he nor Ward nor Baker hung out with Gangster Disciples.

¶ 44 For the State's rebuttal, ASA Christa Peterson testified that she spoke with McIntyre on April 27th and that he never told her that he looked out of his bedroom window after hearing gunshots, never told her he saw the shooter running away, and never told her that the shooter was six feet tall, light skinned, heavy set, or that the shooter was wearing a purple hoodie. ASA Peterson chose not to present McIntyre to the grand jury because he did not indicate that he had seen anything.

¶ 45 Detective McClendon testified that he was at Area Two on April 20, 2009 when Detective Maas spoke to McIntyre. He testified that McIntyre never told Detective Maas that he saw the person who was shooting.

¶ 46 Of relevance to this appeal, during closing arguments, the State told the jurors that they could substantively consider Baker, Robinson, and Jones' prior written statements as well as Ali,

Robinson and Jones' grand jury testimony. After the case was handed to the jury, the jury requested copies of the handwritten statements of the ASAs twice before those copies were given to the jury. Upon receipt of the requested materials, the judge received a note from the jury that they were at an impasse, with 6 guilty, 4 not guilty and 2 unsure. After a few more hours, the judge received another note stating that the jury was still at an impasse, with 8 guilty and 4 not guilty. The jury was then sequestered. The jury resumed deliberations the next morning and after a few hours, the jury found Watson guilty of first-degree murder and of personally discharging the firearm that proximately caused Williams' death.

¶ 47 Defendant then requested a judgment notwithstanding the verdict or in the alternative a new trial arguing largely that the State failed to prove Watson's identity as the shooter. The trial court judge denied the motion and made the following comments on the record:

> THE COURT: The case was where it was almost every witness put on by the State flipped the State. Unfortunately, for those witnesses they were either on handwritten statements signed by them, acknowledged by them, or on grand jury statement under oath.
>
> The jury chose to believe the testimony put forth by those witnesses at the grand jury or the handwritten statement close in time to the incident where their memory was sharpest, that's the job of the trier of fact.
>
> The witnesses did nothing to cooperate with the State. During their testimony they did everything to protect and to shelter Mr. Watson by their testimony. They were out and out liars. They

> were impeached substantively and the jury chose to believe the substantive evidence in the way of grand jury testimony and handwritten statement.
>
> The jury was charged with the task of deciding who was credible and who was not. The jury decided the State proved their case beyond a reasonable doubt.

¶ 48 At the sentencing hearing, the State presented a victim impact statement from Williams' great aunt. The State also argued that Watson had a violent juvenile criminal history, which included probation for theft, a violation of probation, an aggravated battery case, and probation for possessing a gun. The State also pointed out that Watson was the person who pulled the trigger, killing an unarmed, unsuspecting Williams in broad day light. In mitigation, the defense presented Watson's mother who testified that Watson was a "good kid" and an honor roll student. Attorney Sam Adam, Jr. also testified in mitigation that he used to have an office in the neighborhood and Watson would do work for him. He testified that every Christmas, he offered the neighborhood kids $100 if they would take a book from his office and write a book report about it. Watson was the only one who ever took him up on the offer, and he did it for three or four years in a row. The defense also asked that the judge consider Watson's young age in determining an appropriate sentence. Watson then spoke before the judge, telling the judge he was a "good kid" and an "honor roll student who was looking forward to going to college." He further told the judge that he was a product of society.

¶ 49 The judge imposed a 35-year sentence for the first-degree murder conviction, adding a 25-year add on for personally discharging the firearm that killed Williams, for a total of 60 years. In imposing this sentence, the trial court judge stated that he carefully considered all the evidence

presented at trial, the arguments made by both counsel, and the statutory factors presented in mitigation and aggravation. The trial court judge noted the disturbing nature of Watson's juvenile criminal history, which included aggravated battery in a public place, theft and unlawful use of a weapon as well as several violations of the probation sentences he had been serving for those juvenile convictions. The judge also emphasized that Watson had shot another human in the back in broad daylight and had been convicted of the ultimate crime, first-degree murder. The trial court judge commented that the 60-year sentence was being imposed to "deter others from engaging in senseless killing," "to protect the citizenry," and to "make sure [Watson] takes no one else's life."

¶ 50 Watson now appeals his conviction and sentence claiming that the State failed to prove his conviction beyond a reasonable doubt, that Watson was denied a fair trial due to several statements that were improperly admitted at trial, and that the 60-year sentence imposed by the trial court judge was improper because the judge failed to consider Watson's rehabilitative potential and youth. Defendant also argues his sentence must be reversed because the mandatory firearm enhancement statute, the truth in sentencing statute, and the automatic transfer provision of the Juvenile Court Act are unconstitutional under both state and federal constitutions. For the reasons set forth below, we affirm Watson's conviction and sentence.

¶ 51 **ANALYSIS**

¶ 52 I. Sufficiency of the Evidence

¶ 53 Watson argues that the State failed to prove its case beyond a reasonable doubt because: (1) none of the witnesses testified that they actually saw the shooting; (2) none of the witnesses identified Watson as the shooter; (3) the State's prior-statement evidence was unreliable because the statements were not taken on the night of the shooting, the statements were taken from

convicted felons, one of the witnesses, William Jones, had been a suspect in the case, another witness, Eugene Ali, had poor vision and was allegedly high and drunk at the time of the shooting and while testifying before the grand jury, and another witness, Timothy Robinson, was kept overnight before giving his statement; and (4) the State failed to introduce any evidence supporting its purported motive, gang rivalry. For the reasons stated below, we find that the State presented sufficient evidence to support Watson's first-degree murder conviction.

¶ 54 When assessing reasonable doubt, we view the evidence in a light most favorable to the State and determine whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *People v. Collins,* 106 Ill. 2d 237 (1985). The reviewing court's duty is not to ask itself whether it believes the evidence establishes guilt (*People v. Banks*, 287 Ill. App. 3d 273, 285 (1997)), and we do not reassess the witnesses' credibility or reweigh their testimony, since these functions belong to the trier of fact. *People v. Jimerson,* 127 Ill. 2d 12 (1989); *People v. Herman,* 407 Ill. App. 3d 688, 704 (2011) ("the trier of fact is in the best position to judge the credibility of witnesses, and due consideration must be given to the fact that the fact finder saw and heard the witnesses"). Where inconsistencies and conflicts exist in the evidence, the trier of fact has the responsibility of weighing the credibility of the witnesses and resolving these conflicts and inconsistencies. *People v. Rodriguez*, 312 Ill. App. 3d 920, 932 (2000). Under section 115-10.1 of the Code of Criminal Procedure of 1963 (the Code) prior inconsistent statements will not be deemed inadmissible under the hearsay rule where the statements are inconsistent with trial testimony and where the prior statement was made under oath or signed by the witness making the statement. See 725 ILCS 5/115-10.1 (West 2008); see also Ill. R. Evid. 801(d) (eff. Jan. 1, 2011) (modified to include the language in section 115-10.1, which allows prior inconsistent statements to be admitted substantively into evidence where the

witness testifies at trial and where the prior statement was made under oath or signed by the witness making the statement). A reversal is warranted only if the evidence is so improbable or unsatisfactory that it leaves a reasonable doubt regarding the defendant's guilt. *People v. Johnson*, 347 Ill. App. 3d 442, 445 (2004).

¶ 55 Here, as pointed out by the trial court judge, the jurors heard all the testimony, which included the inconsistent testimony from each of the occurrence witnesses, and decided that they believed the occurrence witnesses' statements that were made closer in time to the shooting rather than the occurrence witnesses' statements that were made at trial. Those statements made closer in time to the shooting, and made by way of signed statements or statements made under oath, amounted to sufficient evidence to convict Watson of first-degree murder. Baker's signed statement indicated that Watson was wearing a dark-colored hoodie on the day of the shooting; McIntyre told Baker, Watson and Ward that there were "hooks" outside; Watson told Baker that he saw Williams outside; Watson ran out of the apartment just before the shooting; from McIntyre's bedroom window, Baker saw Watson running southbound on Cottage Grove after the shooting; and, while running, Watson was holding his arms close to his body. Robinson's signed statement indicated that he saw Watson skipping down the street while wearing a purple hoodie; Watson was smiling and one of his hands was in the pocket of his hoodie; Watson was moving towards Williams; he turned his back from Watson and continued talking to girls when he heard gunshots a few seconds later and subsequently saw Watson running down Cottage Grove towards 62nd Street. Robinson's grand jury testimony similarly indicated that he saw Watson walking toward the gate where Williams was standing; Watson was wearing a purple colorful hoodie; Watson was alone while walking towards Williams and had one hand inside his hoodie pocket; and that he did not see Williams and Jones running, but he saw Watson running on

Cottage Grove towards 62nd Street. Jones' signed statement indicated that as he and Williams approached the gate, he looked over his left shoulder and then heard gunshots; that Jones saw someone who he now knows is Watson pointing a gun at Williams' back from about ten feet away; Jones heard gunshots, which sounded like they came from a revolver; and after hearing the gunshots, Jones saw Watson running south on Cottage Grove. Jones' grand jury testimony similarly indicated that he knew someone by the name of "Little Kevin" and had seen him twice playing basketball before the shooting; Jones and Williams were talking shoulder to shoulder by the gate; Jones turned to look at Williams and saw Watson walk up behind him and point a gun at his back from ten feet away; Jones saw fire jump out of the gun; and Watson was wearing a black hoodie. Ali's signed statement indicated that, in the minutes following the shooting, Ali saw Watson and thought he was sweating and nervous, and he was pretty sure he heard Watson say "Man, what the hell did I do? Man, what the hell did I do?"

¶ 56 Based upon all of the evidence, when viewed in the light most favorable to the State, we find that the State presented sufficient evidence to support the jury's first-degree murder conviction. Although the testimony from Baker, Robinson, Jones and Ali at trial differed from their prior statements that were signed and made under oath, it was for the jury to determine the credibility of the witnesses and which versions of the testimony they would believe (see *People v. Rodriguez*, 312 Ill. App. 3d 920, 932 (2000)), and they chose to believe the statements that were make under oath and closer in time to the shooting. We see no reason to disturb the jury's findings here, especially given the evidence they heard at trial (discussed above).

¶ 57 While Watson specifically argues that the State failed to prove Watson's identity as the shooter, we find that based upon the above evidence, Watson's identity was sufficiently proven. The pretrial testimony places Watson at the scene of the shooting; Watson moving towards

Williams with one hand in his hoodie pocket; Watson pointing a gun at Williams' back; Watson running away after the shooting crouched over; and Watson saying "Man, what the hell did I do? Man, what the hell did I do?" immediately following the shooting. More specifically, Jones testified before the grand jury that he saw Watson pointing a gun at Williams' back from about ten feet away and saw fire jump out of the gun. Thus, viewing all the evidence in a light most favorable to the prosecution, we find that the State has proven its case beyond a reasonable doubt, including Watson's identity.

¶ 58 Last, while Watson argues that the State failed to prove its theory of the case, gang rivalry, and failed to present any physical evidence linking Watson to the shooting, there is no requirement that the State present such evidence in order to convict Watson of first-degree murder. *People v. Hooker*, 249 Ill. App. 3d 394, 400 (1993) (citing 720 ILCS 5/9-1 (West 1992)) ("The crime of first degree murder occurs when a person kills an individual without lawful justification and he either intends to kill or do great bodily harm to that individual, or knows that such acts will cause death to that individual, or knows that such acts create a strong probability of death or great bodily harm to that individual.").[1] Furthermore, as we have already found that the State proved its case beyond a reasonable doubt, we see no reason to disturb that finding even where there is no physical evidence linking Watson to the shooting or where the State allegedly failed to prove a motive. Therefore, we affirm the trial court's conviction of first-degree murder.

[1] The Criminal Code currently states that: "(a) A person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause the death: (1) he either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or (2) he knows that such acts create a strong probability of death or great bodily harm to that individual or another; or (3) he is attempting or committing a forcible felony other than second degree murder." 720 ILCS 5/9-1 (West 2008).

¶ 59 II. Admission of Multiple Prior Inconsistent Statements

¶ 60 Next, Watson argues that the trial court judge improperly admitted several witness statements. Watson acknowledges that he has forfeited this issue of prior statements by failing to properly preserve the issue for review. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) ("*Both* a trial objection *and* a written post-trial motion raising the issue are required for alleged errors that could have been raised during trial." (Emphasis in original.)). Nevertheless, Watson argues that these errors are reviewable under the plain error doctrine. *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). A reviewing court will only apply the plain-error doctrine when " '(1) 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) 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.' " *People v. Thompson,* 238 Ill. 2d 598, 613 (2010) (quoting *People v. Piatkowski,* 225 Ill. 2d 551, 565 (2007)). "In plain-error review, the burden of persuasion rests with the defendant." *Id.* The first step in applying the plain-error doctrine is to determine whether any error occurred at all. *Id.* As such, we will review each statement separately below to determine whether any error occurred in admitting each statement.

¶ 61 The first statement Watson argues was improperly admitted was the oral statement that Robinson made to Detective Maas. On April 16, 2009, Detective Maas testified that Robinson told him that Watson was wearing a purple hoodie and skipping through the parking lot towards Williams with one of his hands in his pocket and that after he heard the gunshots he saw Watson running south on Cottage Grove. Detective Maas testified that Robinson never told him that he was smoking marijuana on the day of the shooting. Detective Maas testified that he was present

for the photo array on April 16th and for the line-up on April 24th, and that Robinson identified Watson as the person he saw run up behind Williams at the time of the shooting. These statements that Robinson made to Detective Maas were not signed or made under oath, but they were admitted by the trial court judge for impeachment purposes only. Watson argues that the trial court abused its discretion when it admitted "as non-substantive impeachment" Robinson's statement to Detective Maas because that statement should not have been admitted for any reason since the statements were not truly inconsistent with Robinson's trial testimony, the State failed to lay a foundation for the statement, and because they did not affirmatively damage the State's case. Watson argues that the admission of this statement is to be reviewed under an abuse of discretion standard. *People v. Harris*, 231 Ill. 2d 582, 588 (2008) ("[T]rial court possesses discretion in determining the admissibility of evidence."). We find that the trial court did not abuse its discretion when it admitted "as non-substantive impeachment" Robinson's oral statement to Detective Maas.

¶ 62 Illinois Rule of Evidence 407 states: "The credibility of a witness may be attacked by any party, including the party calling the witness, except that the credibility of a witness may be attacked by the party calling the witness by means of a prior inconsistent statement only upon a showing of affirmative damage." Ill. R. Evid. 407 (eff. Jan. 1, 2011). Section 115-10.1 of the Code further states "[n]othing in this Section shall render a prior inconsistent statement inadmissible for purposes of impeachment because such statement was not recorded or otherwise fails to meet the criteria set forth herein." 725 ILCS 5/115-10.1 (West 2008). While Watson argues that Robinson's testimony at trial was not inconsistent with his statement to Detective Maas and was not damaging, we find the opposite. At trial, Robinson either denied or claimed that he could not remember telling Detective that he saw a "shorty" wearing a purple-colored

hoodie skipping through the lot at 6119 South Cottage Grove westbound, that this individual passed him and headed toward Williams, that this individual had his hand in his pocket, and that after the shots he saw this individual run south on the east side of Cottage Grove. Robinson further denied identifying Watson in the photo array as the person who walked passed him with his hand in his pocket, approach Williams from behind, and then run southbound down Cottage Grove towards 62nd Street after the shots were fired.[2] Accordingly, where Robinson claimed that he could not remember giving statements to Detective Maas that implicated Watson in the crime by placing Watson at the scene of the shooting, skipping towards Williams with one hand in the pocket of his purple-colored hoodie just before the shooting, and running south on Cottage Grove following the shooting, the trial court did not commit error in admitting Detective Maas' testimony about those statements for impeachment purposes only. Further, even if we were to find that Robinson's statement to Detective Maas was improperly admitted for impeachment only, which we did not, given that the State presented written, signed statements and grand jury testimony implicating Watson in the shooting that were similar to those statements Robinson made to Detective Maas, such an admission would have amounted to harmless error because there is competent evidence in the record to establish defendant's guilt. See *People v. Negron,* 297 Ill. App. 3d 519, 536 (1998) (error in the admission of evidence is harmless when the competent evidence in the record establishes a defendant's guilt beyond a reasonable doubt and it can be concluded that a retrial without the erroneous evidence would produce the same result).

¶ 63 Next, Watson argues that three statements made by Robinson prior to his trial testimony--one to Detective Maas (discussed above), one to ASA Moore and one to ASA Peterson--and two statements made by Jones--one to ASA Rosen and one to ASA Peterson--were improperly

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[2] Robinson further denied making nearly identical statements to ASA Moore and before the grand jury.

admitted as substantive evidence. While Watson acknowledges each pretrial statement given by Robinson and Jones separately could be “prior inconsistent statements” that would be otherwise admissible as substantive evidence under section 115-10.1 of the Code (725 ILCS 5/115–10.1 (West 2008)), Watson contends that the trial court judge erred in admitting multiple pretrial statements from the same witness under section 115-10.1 because they were consistent statements. With regard to this argument, Watson argues that our review is *de novo* because we are dealing with an issue of statutory interpretation because "[a]llowing Section 115-10.1 to operate as an exception the prohibition against prior consistent statements gives the State an unjust windfall." With respect to Watson's argument that the admission of the prior statements was cumulative, he argues that we apply the abuse of discretion standard.

¶ 64 Section 115-10.1 of the Code state , in relevant part:

> "In all criminal cases, evidence of a statement made by a witness is not made inadmissible by the hearsay rule if:
>
> (a) the statement is inconsistent with his testimony at the hearing or trial, and
>
> (b) the witness is subject to cross-examination concerning the statement, and
>
> (c) the statement--
>
> (1) was made under oath at a trial, hearing, or other proceeding, or
>
> (2) narrates, describes, or explains an event or condition of which the witness had personal knowledge, and

(A) the statement is proved to have been written or signed by the witness[]." 725 ILCS 5/115-10.1 (West 2008).

Illinois Rule of Evidence 801(d) was also adopted in January 2011 to include the language contained in section 115-10.1 of the Code, and also allows prior inconsistent statements to be admitted substantively into evidence where the witness testifies at trial and where the prior statement was made under oath or signed by the witness making the statement. See Ill. R. Evid 801(d) (eff. Jan. 1, 2011).

¶ 65 At trial, Jones and Robinson testified that they either did not give the testimony that was in their written, signed statements and grand jury testimony, or they did not remember giving the testimony that was in their written, signed statements and grand jury testimony. In response, the State introduced Jones and Robinson’s prior written statements and grand jury testimony. Robinson's written statement and grand jury testimony were nearly identical. Likewise, Jones' written statement and grand jury testimony were also nearly identical. As an issue of statutory interpretation, we find that our court has already determined that where a witness has given multiple statements prior to trial and those statements were made under oath or were signed by the witness, those statements, even if consistent with one another, may be admitted substantively under section 115-10.1 where the witness provides an inconsistent statement at trial. See *People v. White*, 2011 IL App (1st) 092852.

¶ 66 In *People v. White*, after six occurrence witnesses testified that they did not see the defendant shooters who were on trial for first-degree murder, the State confronted each witnesses with their prior written statements and grand jury statements wherein each witness implicated defendants as the shooters. *White*, 2011 IL App (1st) 092852, ¶ 15. The defendants in *White* argued, as Watson argues here, that the trial court erred in admitting the statements because "the

rule barring prior consistent statements prevented admission of any other inconsistent statements that were consistent with the first" and requested that the court "create a bright-line rule prohibiting admission of any prior inconsistent statement under section 115-10.1, where that statement is consistent with a witness's previously admitted prior inconsistent statement." *Id.* ¶ 50. However, while the *White* court recognized the "inherent tension between the admission of multiple prior inconsistent statements as substantive evidence under section 115-10.1 and the rule barring admission of prior statements that bolster trial testimony" (i*d.* ¶ 51), the court found that "[w]hile a blanket prohibition (with limited exceptions) makes sense for prior consistent statements, applying that same general bar to inconsistent statements that are consistent with each other would frustrate the legislature's goal [in enacting section 115-10.1] of discouraging recanting witnesses." *Id.* ¶ 53. As such, the *White* court ruled:

> "Drawing on the general rule prohibiting introduction of prior consistent statements, defendants claim that once the court admitted one prior inconsistent statement, the court was prohibited from admitting a second inconsistent statement that was consistent with the first. As defendants acknowledge, this court has rejected the same argument in prior cases. *People v. Santiago,* 409 Ill. App. 3d 927 (2011); *People v. Perry,* 2011 IL App (1st) 081228; *People v. Maldonado,* 398 Ill. App. 3d 401, 423 (2010); *People v. Johnson,* 385 Ill. App. 3d 585, 608 (2008)." *White*, 2011 IL App (1st) 092852, ¶ 49.

Because we see no reason to stray from our court's precedent and analysis on this issue, we find that the trial court judge did not err when he admitted the pretrial statements of Robinson and Jones pursuant to section 115-10.1 of the Code.

¶ 67 Watson also argues that the admission of the prior consistent statements was cumulative and, as a result, unfairly prejudiced his case. "Evidence is considered cumulative when it adds nothing to what was already before the jury." *People v. Ortiz,* 235 Ill. 2d 319, 335 (2009). The admission of evidence is within the circuit court's discretion, and the court's ruling will not be reversed absent an abuse of discretion. *Gill v. Foster,* 157 Ill. 2d 304, 312-13 (1993). An abuse of discretion may be found only where no reasonable man would take the view adopted by the circuit court. *Clayton v. County of Cook*, 346 Ill. App. 3d 367, 377 (2003).

¶ 68 Here, like the court found in *White* (see *White*, 2011 IL App (1st) 092852, ¶¶ 41-47), we find that the presentation of the grand jury testimony was not merely cumulative of what was already before the jury by way of signed written statements. Rather, in light of all the inconsistencies in the witness statements, the jury had to determine which version of testimony it would believe when determining whether Watson shot and killed Williams. Given the jury's necessary task of determining whether the witnesses' in-court statements were more or less reliable that their out-of-court statements, we cannot say that the admission of each witnesses' signed, written statements along with their grand jury statements was cumulative such that it added nothing to what was already before the jury. See *People v. Wilson*, 2012 IL App (1st) 101038, *appeal denied*, 979 N.E. 2d 888 (Ill. 2012) and *cert. denied*, 133 S. Ct. 1823 (2013) (where witness denied making prior statements, it was probative and within the trial court's discretion to admit multiple prior inconsistent statements). Further, even where statements have been found to be unnecessarily repetitive, this court has found that such repetition did not rise to

the level of unfair prejudice. See *People v. Fields,* 285 Ill. App. 3d 1020, 1028 (1996). As such, we find that the trial court did not err in admitting both the written statements and grand jury statements of Robinson and Jones.

¶ 69 III. Sixty-year Sentence

¶ 70 Watson argues that his 60-year sentence for first-degree murder should be vacated because the trial court judge failed to consider his rehabilitative potential as a juvenile and, as a result, sentenced Watson to a *de facto* natural life sentence. We disagree.

¶ 71 It is well established that a trial court has broad discretionary authority in sentencing a criminal defendant. *People v. Stacey,* 193 Ill. 2d 203, 209 (2000). The trial judge's determination of an appropriate sentence must be given great deference and weight, because the trial judge is in the best position to make a sound determination regarding punishment. *People v. Cabrera*, 116 Ill. 2d 474, 494 (1987); *People v. Whitehead*, 171 Ill. App. 3d 900, 908 (1988). In determining an appropriate sentence, the trial judge is required to consider all factors in aggravation and mitigation, which includes defendant's credibility, demeanor, general moral character, mentality, social environments, habits, and age, as well as the nature and circumstances of the crime. *People v. Evans*, 373 Ill. App. 3d 948, 967 (2007); *People v. Streit,* 142 Ill. 2d 13, 19 (1991) (The trial judge has the opportunity to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age.). Consequently, the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently. *Whitehead*, 171 Ill. App. 3d at 908. There is a strong presumption that a trial court has considered any evidence of mitigation brought before it. *Id*. A court of review will not disturb a defendant's sentence absent an abuse of discretion. *Cabrera,* 116 Ill. 2d at 494; *Whitehead,* 171 Ill. App. 3d at 908.

¶ 72 A sentence is presumed to be proper. *People v. Jenkins*, 128 Ill. App. 3d 853, 857 (1984). The presumption may be rebutted only by an affirmative showing that the sentence imposed greatly departs from the spirit and purpose of the law or is manifestly contrary to constitutional guidelines. *People v. Murphy*, 72 Ill. 2d 421, 439 (1987). Here, the trial court judge sentenced Watson to 35 years for his first-degree murder conviction, and 25 years was added pursuant to the mandatory firearm enhancement because the jury found that Watson personally discharged the firearm that proximately caused Williams' death. The trial court judge was very clear on the record that he considered all the evidence presented in mitigation and aggravation when determining the appropriate sentence for Watson. The judge specifically acknowledged Watson's young age and noted that even at that age Watson already had an extensive and violent criminal record and had shown no respect for laws or authority as was clear from his violations of probation. The trial court judge further commented that a 60-year sentence was appropriate in order to deter similar behavior and to keep society safe from any further senseless harm done by Watson. Because the judge is presumed to have considered all mitigating factors, and the judge here made statements on the record acknowledging that he did in fact consider Watson's youth, we cannot say that the trial court failed to consider Watson's youth and rehabilitative potential when determining an appropriate sentence.

¶ 73 Furthermore, the maximum sentence for first-degree murder is between 20 and 60 years. 730 ILCS 5/5-4.5-20(a) (West 2008). Here, the trial court judge sentenced Watson to 35 years for his first-degree murder conviction. Even with the additional 25 years for the mandatory firearm enhancement, we note that Watson's sentence still falls within the permissive statutory range of 60 years' imprisonment.

¶ 74 Watson nevertheless argues that his sentence should be vacated because of his age and the fact that the 60-year sentence amounts to a *de facto* life sentence. While we agree with Watson's assertion that our courts have recognized the principle that "young defendants have greater rehabilitative potential," as stated above, here the trial court judge was clear on the record that he considered Watson's age while noting that even at a young age, Watson already had an extensive criminal record along with a lack of respect for the law and authority. As such, because we find that the trial court considered Watson's age and rehabilitative potential in determining his sentence, we cannot say that the trial court abused its discretion in sentencing Watson to a total of 60 years' imprisonment.

¶ 75 IV. Mandatory Firearm Enhancement and Truth in Sentencing Statutes

¶ 76 Watson argues that the mandatory firearm enhancement statute in combination with the truth in sentencing statute violate the eighth amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution. The mandatory firearm enhancement statute states "if, during the commission of the offense, the person personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person, 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court." 730 ILCS 5/5-8-1 (West 2008). The truth in sentencing statute states that "a prisoner who is serving a term of imprisonment for first degree murder or for the offense of terrorism shall receive no sentence credit and shall serve the entire sentence imposed by the court." 730 ILCS 5/3-6-3 (West 2008). The combination of these two statutes as applied in this case mandate that Watson will serve his entire 60-year sentence, or what he argues is a *de facto* natural life sentence. Watson argues that "[a]pplying these mandatory sentencing provisions to juveniles like [himself] violates both the United States and

Illinois Constitutions by preventing judges from taking into account a juvenile's 'lessened culpability' and 'greater capacity for change,' despite recent Supreme Court decisions holding that juveniles are less culpable than their adult counterparts." As a result, Watson requests that we vacate his sentence and remand for a new sentencing hearing "at which the judge may decline to apply the firearm enhancements."

¶ 77 The eighth amendment to the United States Constitution prohibits the imposition of cruel and unusual punishments. U.S. Const., amend. VIII. The proportionate penalties clause of the Illinois Constitution provides 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. The proportionate penalties clause has been read as coextensive with the eighth amendment. *In re Rodney H.,* 223 Ill. 2d 510, 518 (2006).

¶ 78 "All statutes are presumed to be constitutional, and the burden of rebutting that presumption is on the party challenging the validity of the statute to demonstrate clearly a constitutional violation. [Citation.] If reasonably possible, a statute must be construed so as to affirm its constitutionality and validity." *People v. Greco,* 204 Ill. 2d 400, 406 (2003). Whether a statute is constitutional involves a question of law, and our review is *de novo. People v. Woodrum,* 223 Ill. 2d 286, 307 (2006).

¶ 79 In *Roper v. Simmons,* 543 U.S. 551, 568 (2005), the Supreme Court held the eighth amendment bars capital punishment for juvenile offenders. The Court stated that "[b]ecause the death penalty is the most severe punishment, the Eighth Amendment applies to it with special force." *Roper,* 543 U.S. at 568.

¶ 80 In *Graham,* 560 U.S. at __, 130 S. Ct. at 2034, the Court held a sentence of life without parole violates the eighth amendment when imposed on juvenile nonhomicide offenders. In that

case, the Court found the punishment of "life without parole is 'the second most severe penalty permitted by law.' "*Graham,* 560 U.S. at __, 130 S. Ct. at 2027 (quoting *Harmelin v. Michigan,* 501 U.S. 957, 1001 (1991) (opinion of Kennedy, J.)). "Life without parole is an especially harsh punishment for a juvenile [because] * * * a juvenile offender will on average serve more years and a greater percentage of his life in prison that an adult offender." *Graham,* 560 U.S. at __, 130 S. Ct. at 2028. The Court stated that although "[t]he Eighth Amendment does not foreclose the possibility that persons convicted of nonhomicide crimes committed before adulthood will remain behind bars for life[, i]t does forbid States from making the judgment at the outset that those offenders never will be fit to reenter society." *Graham,* 560 U.S. at __, 130 S. Ct. at 2030.

¶ 81 In *Miller,* 567 U.S. at __, 132 S. Ct. at 2460, two 14-year-old offenders were convicted of murder, and the trial courts had no discretion but to sentence them to life in prison without the possibility of parole. The defendants argued the mandatory life sentence without parole for juvenile offenders violated the eighth amendment. The Supreme Court agreed. *Miller,* 567 U.S. at __, 132 S. Ct. at 2460. The Court noted "children are constitutionally different from adults for purposes of sentencing." *Miller,* 567 U.S. at __, 132 S. Ct. at 2464. Also, the mandatory sentencing schemes prevented the sentencing courts from taking into consideration an offender's youth, which "prohibit[ed] a sentencing authority from assessing whether the law's harshest term of imprisonment proportionately punishes a juvenile offender." *Miller,* 567 U.S. at __, 132 S. Ct. at 2466. "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." *Miller,* 567 U.S. at __, 132 S. Ct. at 2468. Along with factors such as the family and home environment and the possibility of rehabilitation, the Court held the eighth amendment prohibits "a sentencing scheme that mandates life in prison without

possibility of parole for juvenile offenders." *Miller,* 567 U.S. at __, 132 S. Ct. at 2469. "By making youth (and all that accompanies it) irrelevant to imposition of that harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment." *Miller,* 567 U.S. at __, 132 S. Ct. at 2469.

> "*Graham, Roper,* and our individualized sentencing decisions make clear that a judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles. By requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics and the nature of their crimes, the mandatory sentencing schemes before us violate this principle of proportionality, and so the Eighth Amendment's ban on cruel and unusual punishment." *Miller,* 567 U.S. at __, 132 S. Ct. at 2475.

Here, because we find that Watson was not sentenced to death or life imprisonment without the possibility of parole, we find the Supreme Court's decisions unavailing in this case. Watson was subject to 60 years' imprisonment, which does not equate with "the harshest possible penalty for juveniles." *Miller,* 567 U.S. at __, 132 S. Ct. at 2475. Moreover, the trial court was not without discretion in sentencing defendant between the minimum of 45 years and the maximum of 60 years, and after considering Watson's youth along with all the other mitigating and aggravating factors, the trial court judge determined in his discretion that a 60-year sentence was appropriate.

¶ 82 In *Miller,* 567 U.S. at __, 132 S. Ct. at 2467-68, the Supreme Court found a mandatory life sentence without parole precluded consideration of an offender's age, background, and

relative culpability and would likely result in a greater sentence than adults would serve. Here, however, the trial court considered defendant's age and criminal history in fashioning a sentence within the permissible sentencing range.

¶ 83 Although Watson argues that his 60-year sentence amounts to a *de facto* sentence of natural life without the possibility of parole, we note that the trial court did not automatically sentence Watson without first having the opportunity to consider his age as well as all other mitigating and aggravating factors. In addition, we note that the United States Supreme Court has had the opportunity to review cases that would allow it to expand the reasoning in *Roper, Graham,* and *Miller* to cases wherein *de facto* life sentences were imposed, but declined to do so. See, *e.g., Bunch v. Smith,* 685 F. 3d 546, 552-53 (6th Cir.2012) (89-year sentence imposed upon the juvenile defendant was not specifically "life without parole," and, therefore, there is no violation under *Graham,* and if "the [United States] Supreme Court has more in mind, it will have to say what it is"), *cert. denied* 569 U.S. __, 133 S. Ct. 1996 (2013).

¶ 84 We do acknowledge that a 60-year sentence, based on the statistics presented by Watson, amounts to a sentence that exceeds Watson's life expectancy, which does not sit easily with this court. In *People v. Miller*, 202 Ill. 2d 328 (2002), a 15 year old was convicted of multiple murders based on a theory of accountability. There, when determining the appropriate sentence, the trial court judge refused to sentence the 15 year old offender convicted under a theory of accountability to life in prison as was required by multiple-murder statute, and instead sentenced the offender to 50 years in prison. *Id*. at 343. On review, our supreme court held that the multiple-murder sentencing statute, when converged with the automatic transfer statute and the accountability statute, was unconstitutional pursuant to the proportionate penalties clause of the Illinois constitution when applied to a 15-year-old offender convicted of multiple murders under

a theory of accountability. *Id*. at 341. In coming to this conclusion, our supreme court upheld the 50 year sentence and noted that "[i]t is certainly possible to contemplate a situation where a juvenile offender actively participated in the planning of a crime resulting in the death of two or more individuals, such that a sentence of natural life imprisonment without the possibility of parole is appropriate." *Id*. Accordingly, in the case before us, because the trial court judge was able to consider—*and did consider*—Watson's age along with all the other mitigating and aggravating evidence presented at the sentencing hearing when fashioning Watson's sentence; because the sentence imposed was not death or life without the possibility of parole; because the statutes at issue here have been upheld as constitutional; and because there is no precedent from our supreme court or the United States Supreme Court that would require us to reverse a *de facto* life sentence imposed upon a juvenile who was 15 years old at the time he committed his crime, we affirm the trial court's 60-year sentence.

¶ 85 V. The Automatic Transfer Provision of the Juvenile Court Act

¶ 86 Watson argues that section 5-130(1)(a) of the Juvenile Court Act (705 ILCS 405/5–130(1)(a) (West 2008)), violates the Eighth amendment of the United States Constitution and the proportionate penalties clause of the Illinois Constitution because it automatically requires the transfer of certain juvenile defendants into adult court. See 705 ILCS 405/5-130 (West 2008) (providing for the automatic transfer of juvenile offenders ages 15 and above to adult courts for certain offenses, including first degree murder, among others.). Specifically, based on the Supreme Court's rulings in *Roper, Graham,* and *Miller*, and the principle recognized in those cases that there are fundamental differences between juvenile and adult brain development that make children under 18 less culpable than adults for the same offenses, Watson argues that the automatic transfer statute violates his constitutional rights because it fails to take his

youthfulness into account.

¶ 87 The eighth amendment to the United States Constitution prohibits the imposition of cruel and unusual punishment. U.S. Const., amend. VIII. The proportionate penalties clause of the Illinois Constitution provides 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. The proportionate penalties clause has been read as coextensive with the eighth amendment. *In re Rodney H.,* 223 Ill. 2d at 518.

¶ 88 We recognize the well-established rule that "[a]ll statutes are presumed to be constitutional, and the burden of rebutting that presumption is on the party challenging the validity of the statute to demonstrate clearly a constitutional violation." *Greco,* 204 Ill. 2d at 406 (citing *People v. Sypien,* 198 Ill. 2d 334, 338 (2001)). This presumption means that, if possible, we must construe the statute "so as to affirm its constitutionality and validity." *Greco,* 204 Ill. 2d at 406 (citing *People v. Fuller,* 187 Ill. 2d 1, 10 (1999)). The constitutionality of a statute may be challenged at any time, and *de novo* review applies. *People v. Dinelli*, 217 Ill. 2d 387, 397 (2005).

¶ 89 We do not find the automatic transfer statute violates either the eighth amendment or the proportionate penalties clause of the Illinois Constitution. While Watson relies on *Roper, Graham,* and *Miller* in support of his argument here, in *People v. Salas,* our appellate court found that the automatic transfer statute "does not impose any punishment on the juvenile defendant, but rather it only provides a mechanism for determining where defendant's case is to be tried." *People v. Salas,* 2011 IL App (1st) 091880, ¶ 66. Therefore, because the statute does not impose any punishment, the *Salas* court found it was not subject to eighth amendment scrutiny. *Id.*; see also *People v. Jackson,* 2012 IL App (1st) 100398, ¶¶ 23-24; *People v.*

Pacheco, 2013 IL App (4th) 110409, ¶ 55 (agreeing with *Salas*). Moreover, we note, as this court did in *People v. Harmon*:

> "*Graham, Roper,* and *Miller* stand for the proposition that a sentencing body must have the chance to take into account mitigating circumstances before sentencing a juvenile to the 'harshest possible penalty.' *Id.* The harshest possible penalties involved in those cases, *i.e.,* the death penalty and life imprisonment without the possibility of parole, are simply not at issue here. See *People v. Pacheco,* 2013 IL App (4th) 110409, ¶ 51 ("[T]he Supreme Court in *Roper, Graham,* and *Miller* was only concerned with the death penalty and life without the possibility of parole, which are the two most severe punishments allowed under the United States Constitution."). *People v. Harmon,* 2013 IL App (2d) 120439, *appeal pending* (Mar. 2014), ¶ 54.

As such, because the automatic transfer statute does not actually impose a penalty and because here we are not dealing with the harshest criminal penalties, death or life without the possibility of parole, we find that the automatic transfer statute does not violate the eighth amendment cruel and usual punishment clause of the United State constitution or the proportionate penalties clause of the Illinois constitution.

¶ 90 Further, Illinois courts have found the automatic transfer statute does not violate a juvenile offender's substantive and procedural due process rights either. See *People v. J.S.,* 103 Ill. 2d 395, 402-05 (1984) (Automatic transfer statute constitutional because it was not unreasonable for the legislature to determine that 15 and 16 year olds who have committed

certain crimes should be treated differently than those under 15); *People v. Patterson,* 2012 IL App (1st) 101573, ¶ 27 (rejecting defendant's challenge to the constitutionality of the Juvenile Court Act's automatic transfer provision for juveniles at least 15 years old accused of aggravated criminal sexual assault); *People v. Jackson,* 2012 IL App (1st) 100398, ¶¶ 13–17 (holding "*People v. J.S.* remains on solid footing with the Supreme Court's holdings in *Roper* and *Graham*" and "Defendant's substantive due process rights were not violated when he was automatically transferred to adult court pursuant to the automatic transfer provision of the Illinois Juvenile Court Act"); *People v. Croom,* 2012 IL App (4th) 100932, ¶¶ 13-18. In *People v. Croom*, this court noted *Roper* and *Graham* did not consider due process arguments and found those cases distinguishable because each "applied (1) a different analysis (2) under a different test for (3) an alleged violation of a different constitutional provision regarding severe sentencing sanctions—not the automatic transfer to adult court at issue here." *Croom,* 2012 IL App (4th) 100932, ¶¶ 13-18; see also *Pacheco*, 2013 IL App (4th) 110409, ¶ 63 *appeal allowed*, 996 N.E.2d 20 (Ill. 2013). Moreover, and probably most importantly, here the trial court was able to consider Watson's age, and did in fact consider Watson's age, in determining an appropriate sentence. As such, based upon our Illinois court precedent, which has upheld the constitutionality of the automatic transfer statute even in the wake of *Roper*, *Graham* and *Miller*, we find that the automatic transfer statute did not violate Watson's substantive or procedural due process rights.

¶ 91 CONCLUSION

¶ 92 For the reasons stated above, we affirm the trial court's first-degree murder conviction and 60-year sentence.

¶ 93 Affirmed.