2014 IL App (2d) 120612-U
No. 2-12-0612
Order filed May 30, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. EARL F. BOYD, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Winnebago County. No. 10-CF-2991 Honorable John R. Truitt, Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The State's evidence was sufficient to the extent that, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found beyond a reasonable doubt that defendant committed the offense of aggravated discharge of a firearm. Defense counsel's cross-examination of the State's witnesses provided evidence to the jury that someone other than defendant had committed the shooting, and was not at odds with defendant's theory of the case, and as such, was a matter of trial strategy. No abuse of the trial court's discretion occurred when it imposed a term that fell within the middle of the available sentencing range. We affirmed the judgment of the trial court.

¶ 2 Following a jury trial, defendant, Earl F. Boyd, was convicted of aggravated discharge of a firearm (720 ILCS 5/24-1.2 (West 2010)) and unlawful possession of weapons by a felon (720 ILCS 5/24-1.1(a) (West 2010)) and sentenced to 19 years' imprisonment. On appeal, defendant

contends that the State's evidence was insufficient to support his conviction for the aggravated discharge of a firearm; his trial counsel was ineffective; and his sentence was excessive. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On August 23, 2010, the Rockford police department was called to 119 S. Day Avenue in Rockford in response to a report of a shooting. When they arrived, officers observed that the rear of a Pontiac Grand Am in the driveway had been struck by gunfire, and they observed two bullet holes in the front door of the house owned by Teresa Gillis. Officers discovered two spent 9 mm shell casings in the driveway and one spent 9mm shell casing on the top of the trunk of the vehicle. The officers also observed that the back window of the vehicle was shattered and noticed a bullet hole on top of the trunk. The officers observed a hole through the front porch wall that entered the living room, where they discovered a copper slug on the floor near the front door. Following an investigation, defendant was arrested.

¶ 5 In August 2010, a grand jury returned an indictment against defendant, charging that he committed the offenses of unlawful possession of weapons by a felon and aggravated discharge of a firearm. With respect to the offense of aggravated discharge of a firearm, the grand jury charged that defendant:

> "knowingly discharged a firearm at or into a building located at 119 S. Day Avenue, Rockford, Illinois, and he knew or reasonably should have known that the building was occupied and the firearm was discharged from a place or position outside the building."

¶ 6 The trial court conducted a jury trial beginning on February 14, 2012. After the parties presented their opening statements, the State called Officer James Presley, with the Rockford

police department. Presley testified that, on August 23, 2010, at approximately 1 a.m., he was dispatched to 119 South Day Avenue. Upon his arrival, he observed a blue Pontiac with its windows shattered in the driveway. He discovered two spent shell casings in the driveway and another one on top of the vehicle. As he approached the front door of the residence, Presley noticed two bullet holes in the door. Once inside the house, Presley observed bullet slugs that were "littered" on the carpet near the window. Presley testified that there were two children in the house.

¶ 7 Andrea Cotton testified that during the evening hours of August 23, 2010, she was "riding around looking for liquor" with "Draco," Tomecka Cotton, and Victoria Hughes. She identified "Draco" as defendant, and they were riding in defendant's vehicle, a brown Impala. Defendant was driving, her sister, Tomecka, was the front seat passenger, and she and Victoria were in the back seat. After awhile, they returned to defendant's home located at Day Avenue and Andrews Street. Defendant asked whether anyone needed "anybody handled on the street." Cotton testified that defendant showed her a black handgun. Cotton lived approximately two blocks from defendant, and she asked defendant to drive her home. Defendant drove her home, but she exited the car to walk, so her boyfriend would not see her.

¶ 8 Cotton further testified that, after she was home, she looked out her window and she observed defendant's vehicle park near Day Avenue and State Street. Cotton closed the window and watched through the blinds. Cotton observed defendant exit the vehicle, walk in the intersection, and look both ways. Cotton testified that she heard shots after that, "more than five." Cotton called 911, and saw the police respond to the scene. Cotton went outside; she heard Gillis scream and she saw defendant standing outside.

¶ 9 Cotton admitted to her prior convictions of obstructing justice, forgery, and disorderly conduct. On cross-examination, Cotton denied having any negative feelings toward Gillis. The State objected to defense counsel's line of questioning, and defense counsel explained that there was "a question as to who did the shooting and who had the motive to do it." Defense counsel further explained that both Cotton and Tomecka had a motive against Gillis and wanted to shoot up her house. Defense counsel asked Cotton whether Tomecka had ill feelings toward Gillis, and Cotton responded there were no ill feelings. Cotton denied telling Officer Hartman on August 29, 2010, that she wanted everyone dead in Gillis's house because Gillis's boyfriend killed Lamarcus Banks, who was the father of Tomecka's son. Cotton admitted that she told Officer Hartman that defendant had a .22-caliber handgun.

¶ 10 Cotton further admitted that she gave a written statement to Detective Beets and Detective Harris on October 12, 2010, and did not tell them about her boyfriend or her getting dropped off a block early. Cotton admitted that she testified before a grand jury on November 3, 2010, where she told the grand jury she was with defendant and "the killer, Trap." "Trap" was the street name of Ladarius. Cotton admitted that she made a pact not to talk about this. Cotton denied again that Tomecka wanted Gillis's house "shot up." She denied telling Officer Hartman that. Cotton denied telling Hartman that Tomecka should have been arrested. Cotton denied telling the grand jury that Tomecka said that Gillis's boyfriend, Cody, shot and killed Tomecka's boyfriend, Lamarcus Banks; however, defense counsel impeached her testimony with a transcript of the grand jury proceedings.

¶ 11 On redirect, Cotton testified that she was uncomfortable testifying about her sister and that she was trying to protect her. Cotton testified that she knew two individuals by the name of "Trap": Littrail and Ladarius; but Ladarius was the one at the house.

¶ 12 On recross-examination, Cotton agreed that she was protective of her sister and added that she had not seen her for approximately one year. Cotton admitted that, only six days after the shooting, on August 29, 2010, she told Hartman that her sister should be arrested, and agreed that it was "in the same spirit of being protective." Cotton admitted that she never told Hartman or the other detectives about defendant standing on the corner.

¶ 13 Detective Bryce Lambrecht of the Rockford police department testified that, on August 23, 2010, he was working the night shift of the identification unit. In that capacity, he processes all of the felony crime scenes, ranging from burglaries to shootings and homicides. Lambrecht responded to the call of shots fired at 119 Day; he arrived with Detective Gibbons and met with Officer Presley. Lambrecht located three spent shell casings, a bullet fragment, and another spent bullet, and collected the evidence. He determined that the vehicle that was parked in the driveway was struck three times and the residence was struck twice. Lambrecht identified the exhibits and described the locations of the bullets and other evidence.

¶ 14 Victoria Hughes testified next. Hughes testified that she lives in Rockford but was in custody at the moment for having violated her probation in a forgery case. Hughes testified that on August 23, 2010, she was riding around with Tomecka Cotton, Andrea Cotton, and defendant; defendant was driving. At some point, defendant drove around the corner from West State and Day. Defendant got out of the car and he was holding a gun. Hughes testified that defendant went around a corner and then she heard about six gun shots. Afterwards, defendant returned to the car, and they drove away. Hughes testified that defendant dropped off Andrea and Tomecka near their apartment, and then he dropped her off at her house.

¶ 15 On cross-examination, Hughes admitted that she was "drunk" and "stoned" that evening. Hughes admitted that Tomecka and Gillis did not like each other and that Andrea and Gillis did

not like each other. Hughes admitted that they all decided they weren't going to say anything about the August 23 shooting. Hughes admitted that she told the police that she did not see a gun because she did not want to testify, but that she really did see a gun.

¶ 16 Detective Eric Harris of the Rockford police department testified that in October 2010 he participated in taking a written statement from Hughes. Harris testified that he showed Hughes a photo lineup during the investigation of the August 23 shooting, and she identified defendant.

¶ 17 Detective Dwayne Beets of the Rockford police department testified that he was assigned to do a follow-up investigation on the August 23 shooting. Beets testified that on October 12, 2010, he and Harris met with Andrea Cotton. Beets testified that Cotton gave an oral statement, and then he transferred that to a written statement. Beets also showed Cotton a photo lineup, and she identified defendant as the person that she observed at Gillis's house.

¶ 18 The parties stipulated that defendant had been previously convicted of a felony offense.

¶ 19 Michael L. Davis testified that, on October 18, 2010, he went to 304 North Day Street to see his fiancee, Shernette Blair. Davis testified that Blair, Littrail, Ladarius, Lamont, and defendant lived there. Blair asked him to help her locate "something." They searched the basement laundry room, and Davis discovered a firearm. Davis testified that he called Harris.

¶ 20 On cross-examination, Davis admitted that defendant had threatened him two or three times. Davis admitted that Ladarius sometimes slept in the basement.

¶ 21 Detective Maurice Pruitt of the Rockford police department testified that in October 2010 he was assigned to the gang unit. On October 18, 2010, he was called to Blair's house to recover a firearm. Pruitt collected the gun and placed it into evidence.

¶ 22 Russell McLain, III, testified that he was a forensic scientist in the firearm and toolmaker section of the Illinois State Police crime laboratory in Rockford. McLain testified that he

examined the cartridge cases. McLain also examined a firearm and a magazine that accompanied the firearm and ammunition; he opined that the cartridge cases had been fired from the firearm.

¶ 23 The State next called Detective Jeffrey Houde of the Rockford police department. On October 10, 2010, he was a part of the Identification unit and assigned to process a Hi-Point 9-millimeter firearm, ammunition, and a magazine. Houde testified that he was not able to develop any latent fingerprints on any of the items suitable for comparison.

¶ 24 Shernette Blair testified that she lived at 304 North Day Avenue in Rockford. Blair testified that, on October 13, 2010, while she was using the bathroom, she heard a "clinging noise" "like a can hitting up against *** tin" coming up from basement. Blair called Davis and asked him to use the ladder and search the area in the basement where she heard the noise. Blair testified that Davis discovered a gun, and she called Harris.

¶ 25 On cross-examination, Blair admitted that her sons, Littrail and Ladarius, were staying there in 2010. Blair admitted that Ladarius, who was 20 years of age, slept in the basement and sometimes he kept some of his property there. Ladarius was also known as "Trap." Littrail, who was 26 years of age, had a bedroom on the second floor of the house. Blair explained that she called Davis because the Holy Spirit told her that the gun was in her basement and she needed to find it.

¶ 26 Nicole Werkheiser testified that she is a forensic scientist with the Illinois State Police crime lab. She was qualified as an expert to testify in the area of forensic biology and DNA analysis. Werkheiser received a swab from a 9-millimeter pistol from the Rockford police department; she examined the swab and determined there was insufficient human DNA to obtain a profile.

¶ 27 The State rested. Defense counsel offered evidence by way of stipulations. The parties stipulated that Jessica LaLowski, an employee of the Winnebago County State's Attorney's office, would testify that she knew Andrea Cotton and Theresa Gillis. LaLowski would testify that, in December 2011, outside of the courtroom of the Winnebago County courthouse, she heard Cotton say to Gillis, "Bang, bang, bitch." The parties also stipulated that Davis was previously convicted in 2007 of aggravated driving after revocation.

¶ 28 Defendant next called Officer Andrew Hartman, of the Rockford police department, to testify on his behalf. Hartman testified that, on August 29, 2010, he interviewed Andrea Cotton. Cotton told Hartman that she, Tomecka Cotton, Victoria Hughes, and defendant were all in defendant's car when he asked them if they wanted him to take care of anybody; defendant was showing them a gun when he asked them. Cotton told Hartman that Tomecka told defendant that she was having trouble with a girl named Theresa, and she wanted Theresa's whole house shot up. Cotton also explained to Hartman that Tomecka wanted everyone dead in Theresa's house because Theresa's boyfriend had killed Lamarcus Banks, who was the father of Tomecka's baby. Hartman testified that Cotton told him that she was dropped off at her apartment and further, that she thought Tomecka should be arrested.

¶ 29 James Carothers, Jr., testified that he worked for the Illinois Department of Corrections, and on October 14, 2010, he conducted a parole compliance check for defendant at 304 Day in Rockford. Carothers testified that he went into the second-floor bedroom and discovered a gun inside a storage closet. The gun was later placed on the bed in the second-floor bedroom. Carothers testified that the bedroom belonged to another male occupant and not defendant. Following the discovery, Carothers and other officers searched the home for more than an hour.

Carothers further testified that the basement was clear; he had a flashlight, and he and other officers looked in the rafters and in the ductwork of the basement.

¶ 30 Kevin Remmers, a parole officer for the State of Illinois, testified that, on October 14, 2010, he performed a parole compliance check at defendant's home. Remmers testified that Carothers discovered a gun found in the upstairs bedroom, and defendant was taken into custody. Tammy Kuczynski of the Rockford police department testified that, in October 2010, she was a part of the identification unit. Kuczynski was called to 304 North Day and assigned to photograph the gun, collect it, and process it. Kuczynski was advised that the room on the second floor was Littrail Blair's bedroom. Kuczynski observed a shoebox inside the bedroom closet, which contained a black plastic gun box and a 9-millimeter Ruger gun. Kuczynski testified that the officers removed the box and placed the contents on the bed so she could photograph them. Detective Jason Bailey of the Rockford police department testified that on October 14, 2010, he was called to assist a parole compliance check at defendant's home at 304 North Day Avenue and he performed a search of the residence.

¶ 31 Detective Harris of the Rockford police department testified regarding the investigation. Harris testified that, in October 2010, he interviewed Tomecka Cotton and Andrea Cotton. Andrea Cotton told him that the conversation relating to shooting up Gillis's house occurred at defendant's house. Harris also interviewed Victoria Hughes and took her statement. Hughes told Harris that she and Andrea Cotton were with Tomecka Cotton at an apartment building on West State Street and they agreed to walk to defendant's house on Day Avenue.

¶ 32 Detective Dwayne Beets testified on behalf of defendant. Beets testified that Hughes told him that Andrea Cotton had gotten out of defendant's car before the shots and had gone into her apartment.

¶ 33 Detective Maurice Pruitt testified that, on October 18, 2010, he had a conversation with Shernette Blair. Blair told Pruitt that she had a feeling something was in the basement, but did not mention a gun or a Holy Spirit or handling anything with gloves. Pruitt testified that, when he arrived, the gun was on a small table in the living room.

¶ 34 Defendant next presented a stipulation by the parties that the firearm found on October 14, 2010, in the bedroom at 304 North Day Avenue belonged to Littrail Blair. The parties further stipulated that there was no evidence linking that firearm to the aggravated discharge that occurred at 119 South Day Avenue on August 23, 2010.

¶ 35 Defendant rested, and the trial court conducted a jury instructions conference. The parties presented their closing arguments, the trial court instructed the jury, and the jury retired to deliberate. Following deliberations, the jury returned a verdict finding defendant guilty of the aggravated discharge of a firearm and the unlawful possession of a weapon by a felon. The jury also found that the State proved the allegation that, during the commission of the offense of unlawful possession of a weapon by a felon, defendant was on a period of parole or mandatory supervised release. The trial court ordered a presentence investigation report.

¶ 36 Defendant filed a posttrial motion, which the trial court denied. On May 31, 2012, the trial court conducted a sentencing hearing. The trial court entered a judgment of conviction on the conviction for aggravated discharge of a firearm, having concluded that defendant committed one act, one crime. The State commented that, upon reviewing the presentence investigation report, defendant had prior convictions under a different name in Cook County, and therefore was eligible for Class X sentencing. Defendant's prior convictions included an armed robbery from 1991, which was a Class X felony; an aggravated robbery from 2007, which was a Class 1

felony. The trial court noted that the sentencing range would be from 6 to 30 years, and the mandatory supervised release period would run 3 years.

¶ 37 The State presented no witnesses in aggravation. In mitigation, defendant called Officer James Presley. Presley testified that, during his investigation of the shooting, Gillis told him that approximately 45 minutes before the shooting, she and Andrea Cotton were outside. Cotton called Gillis to cross the street, but Gillis observed a male individual acting suspicious in front of her house. Gillis believed he had a gun tucked inside of his waistline, and referred to himself as Tramaine or Deon.

¶ 38 The parties presented their arguments, and defendant gave a statement in allocution. In its comments, the trial court stated that it had considered the evidence at trial; the presentence report and the addendum; defendant's statement in allocution; the victim impact statement; Presley's report and testimony; the arguments of the parties; and the factors in aggravation and mitigation that applied. The trial court noted that the two most compelling factors in aggravation were defendant's prior criminal activity and his status of being on mandatory supervised release at the time the present offense was committed. The trial court noted that defendant's conduct threatened serious harm in that at least one bullet was found inside the victim's residence and the victim's children had been in the room shortly before the shots were fired. The trial court further commented on defendant's criminal history and the nature of the criminal convictions. The trial court reflected that the present conviction was defendant's sixth felony conviction, "[b]ut more compelling," was that they were "[a]ll violent offenses." The trial court thereafter sentenced defendant to 19 years' imprisonment, with credit for time served, and with 3 years of mandatory supervised release.

¶ 39 Following the trial court's denial of defendant's motion to reconsider sentence, defendant filed a timely notice of appeal.

¶ 40 II. ANALYSIS

¶ 41 Defendant first challenges the sufficiency of the evidence. Defendant contends the State failed to prove his guilt beyond a reasonable doubt of committing the aggravated discharge of a firearm. "A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Collins*, 106 Ill. 2d 237, 261 (1985). On a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant. *Id.* Rather, " 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Under this standard, a court of review must draw in the State's favor all reasonable inferences from the record. *People v. Bush*, 214 Ill. 2d 318, 326 (2005).

¶ 42 "A person commits aggravated discharge of a firearm when he or she knowingly or intentionally *** [d]ischarges a firearm at or into a building he or she knows or reasonably should know to be occupied and the firearm is discharged from a place or position outside that building." 720 ILCS 5/24-1.2(a)(1) (West 2010); *People v. Bueno*, 358 Ill. App. 3d 143, 162 (2005). In the present case, defendant argues that the testimony against him was inconsistent and failed to connect him to the weapon use. He asserts that the testimony of the State's witnesses, Andrea Cotton and Victoria Hughes, who were both convicted felons, were so conflicting and confusing as to make their testimony unreliable and beyond belief for any rational trier of fact. Defendant asserts that neither witness saw him commit the offense, but rather they provided

contradictory testimony about what happened as they rode around with him in his car. Defendant noted the inconsistencies in their testimony and in their written statements to police. Defendant also argues that he had been taken into custody on October 14, 2010, and the officers stated that the basement was "clear" of weapons; therefore, he could not have placed the gun in the basement of Blair's house.

¶ 43 Much of defendant's argument focuses on the credibility of the State's witnesses; however, it is not this court's function to retry defendant. See *Collins*, 106 Ill. 2d at 261. Rather, it is for the trier of fact, who saw and heard the witnesses, that is responsible for determining their credibility, weighing their testimony, and deciding on the reasonable inferences to be drawn from the evidence. See *People v. Sweigart*, 2013 IL App (2d) 110885, ¶ 18. To the extent that "the fact finder's decision to accept testimony is entitled to great deference," we also recognize that it "is not conclusive and does not bind the reviewing court." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004); see also *People v. Rivera*, 2011 IL App (2d) 091060, ¶ 25.

¶ 44 The trier of fact, however, need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. *People v. Campbell*, 146 Ill. 2d 363, 380 (1992). Rather, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the accused's guilt. *Id.* A trier of fact is not required to disregard inferences which flow normally from the evidence before it, nor must the trier of fact search out all possible explanations consistent with innocence, and raise those explanations to a level of reasonable doubt. *Id.* "A conviction will not be reversed 'simply because the defendant tells us that a witness was not credible.' " *People v. Brown*, 185 Ill. 2d 229, 250 (1998) (quoting *People v. Byron*, 164 Ill. 2d 279, 299 (1995)).

¶ 45 With the foregoing principles in mind and after viewing the evidence in a light most favorable to the State, we conclude that any rational trier of fact could have found beyond a reasonable doubt that defendant possessed a firearm, that he fired it at Gillis's vehicle and house at a time when he reasonably should have known it to be occupied. See *Bueno*, 358 Ill. App. 3d at 163. Despite the inconsistencies in the State's witnesses' testimony, both Andrea Cotton and Victoria Hughes similarly testified that defendant had a gun and they, along with Tomecka Cotton, were all together. The evidence reflected that there was a vehicle parked in Gillis's driveway. From this evidence, a rational trier of fact could have inferred that defendant possessed a firearm and that he should have known the house was occupied. The testimony was consistent that defendant shot at Gillis's house and vehicle. Both Andrea Cotton and Victoria Hughes identified defendant in a photographic lineup. From this evidence, a rational trier of fact could have inferred that defendant was the individual who fired at Gillis's house and vehicle from the outside. The State's evidence reflected that a firearm was discharged at Gillis's house and vehicle, and McLain's testimony established that the casings found at the scene matched the firearm found in the basement rafters of Blair's house, where defendant resided. Although this is not a perfect link in the chain of circumstances, it need not be, and a rational trier of fact could have inferred that defendant kept the firearm at Blair's house and hid it so well, the officers conducting a search during the parole compliance check were unable to discover it. See *Campbell*, 146 Ill. 2d at 380.

¶ 46 Testimony may be found insufficient to convict only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. *Cunningham*, 212 Ill. 2d at 280. Here, we decline to say that the evidence is so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant's guilt. Rather, we

conclude that, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime of aggravated discharge of a firearm beyond a reasonable doubt. See *Collins*, 106 Ill. 2d at 261.

¶ 47 We next consider defendant's contention that he received the ineffective assistance of counsel at trial. Under the sixth and fourteenth amendments to the United States Constitution and article I, section 8 of the Illinois Constitution, the defendant in any criminal case has a right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 685 (1984); *People v. Jackson*, 205 Ill. 2d 247, 258-59 (2001). " 'The benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.' " *People v. Albanese*, 104 Ill. 2d 504, 525 (1984) (quoting *Strickland*, 466 U.S. at 686). Under *Strickland*, the defendant must demonstrate (1) that counsel's performance fell below an objective standard of reasonableness, and (2) that this deficiency in counsel's performance was prejudicial to the defense. *Strickland*, 466 U.S. at 687, 692; *Albanese*, 104 Ill. 2d at 525 (citing *Strickland*). To establish the ineffective assistance of counsel, a defendant must satisfy both the performance and prejudice prongs of *Strickland*. *People v. Houston*, 226 Ill. 2d 135, 144-45 (2007); see also *People v. Clendenin*, 238 Ill. 2d 302, 317-18 (2010) (because a defendant must satisfy both prongs of this test, the failure to establish either prong is fatal to the claim).

¶ 48 The ultimate focus of the inquiry is on the fundamental fairness of the challenged proceedings. *Strickland*, 466 U.S. at 696. In support of his contention, defendant argues that, through the cross-examination of Andrea Cotton and Victoria Hughes, defense counsel provided the jury with a motive for defendant to have committed the shooting. Defendant asserts that, until defense counsel's cross-examination of Cotton, and later impeachment of her testimony,

there was no evidence connecting him to Gillis or her house. Defendant asserted that, after the State elicited evidence that defendant asked Andrea Cotton, Tomecka Cotton, and Victoria Hughes if they "needed anything handled," defense counsel followed up on cross-examination to elicit detailed evidence of an issue that Tomecka Cotton needed. Defendant asserts that, despite defense counsel's impeachment of Andrea Cotton, counsel also provided the jury with detailed evidence of why the offense was committed. Defendant concludes that, by providing the jury with a motive, defense counsel lessened the likelihood that the jury would have found him innocent.

¶ 49 A defendant must overcome a strong presumption that, under the circumstances, the challenged action or inaction of counsel was a valid trial strategy. *People v. Bloomingburg*, 346 Ill. App. 3d 308, 317 (2004). Because this strong presumption of outcome reliability exists, a defendant seeking to prevail on a claim of ineffective assistance must show that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. *People v. Anderson*, 2013 IL App (2d) 111183, ¶ 52. The reasonableness of counsel's actions must be evaluated from counsel's perspective at the time of the alleged error, and without hindsight, in light of the totality of circumstances, and not just on the basis of isolated acts. *People v. Kelley*, 304 Ill. App. 3d 628, 634 (1999). Because effective assistance refers to competent and not perfect representation (*People v. Odle*, 151 Ill. 2d 168, 173 (1992)), mistakes in trial strategy or judgment will not, of themselves, render the representation incompetent (*People v. Palmer*, 162 Ill. 2d 465, 476 (1994)). We assess counsel's performance using an objective standard of competence under prevailing professional norms. *People v. Ramsey*, 239 Ill. 2d 342, 433 (2010).

¶ 50 Here, and contrary to defendant's argument, the State makes a compelling counter-argument that defense counsel provided sound trial strategy. The theory of defense presented at trial was that defendant did not participate in any shooting. Thus, when the State presented evidence that Andrea Cotton, Tomecka Cotton, Victoria Hughes, and defendant were together on the night of the shooting, defense counsel elicited testimony reflecting that both Andrea Cotton and Tomecka Cotton had motive to shoot at Gillis's house. Hughes corroborated Andrea Cotton's testimony that Tomecka had negative feelings toward Gillis. Defense counsel also elicited testimony that Andrea Cotton made a "pact" not to talk about the shooting; she told Officer Hartman days after the shooting that her sister should be arrested; and she wanted to protect her sister. Defense counsel's examination provided the jury with evidence that someone other than defendant had committed the shooting, and was not at odds with defendant's theory of the case, and as such, was a matter of trial strategy.

¶ 51 Although defense counsel elicited the first evidence linking defendant to Gillis and her house by way of cross-examination of Andrea Cotton, it was not the sole evidence establishing a link. The State presented evidence through the testimony of Presley, Lambrecht, Davis, Harris, Blair, Pruitt, and McLain, which linked the shell casings discovered at the Gillis residence to the firearm discovered at defendant's residence he shared with Blair. Defense counsel questioned the witnesses regarding the discovery of the firearm, the specific location of the firearm in the basement, and whether the other occupants of the house had access to the firearm. Defense counsel's examination provided the jury with evidence that Blair's son, Ladarius, also stayed in the basement bedroom. That evidence would suggest to the jury that someone other than defendant had committed the shooting, and was not at odds with defendant's theory of the case. Defense counsel's line of questioning in this regard was also a matter of trial strategy. Despite

defendant's assertion, defense counsel was not deficient for creating the first link between defendant and Gillis because it came in during the pursuit of a reasonable trial strategy.

¶ 52 Defense counsel's strategy was reasonable despite its ultimate lack of success. See *People v. Szabo*, 144 Ill. 2d 525, 531 (2001) (noting that merely losing a case does not indicate ineffective assistance of counsel). The record as a whole satisfies us that the State's case was subjected to a meaningful adversarial testing. Considering the totality of trial counsel's conduct, we note that trial counsel competently defended this case. Because defendant has failed to make the requisite showing of counsel's deficient performance under the first prong of the Strickland analysis, we need not proceed to the prejudice prong. See *Strickland*, 466 U.S. at 687 (noting that the failure to make the requisite showing of either deficient performance or sufficient prejudice defeats the claim). Accordingly, defendant's claim of ineffective assistance of counsel fails.

¶ 53 Defendant's last challenge is to the trial court's imposition of sentence. Defendant argues that the 19-year term imposed by the court was excessive where the offense resulted in no injuries to Gillis or her children. He also claims that he demonstrated his rehabilitative potential by earning his GED in a previous incarceration and earning certificates in commercial custodial maintenance and floor care. Defendant concludes that the trial court abused its discretion when it sentenced him because it failed to take into account his potential for rehabilitation. He thus requests this court to reduce his sentence or to remand for resentencing.

¶ 54 In imposing a sentence, the trial court must balance relevant factors, such as the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). The trial court is in a superior position to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and

habits. *Id.* In addition, the trial court is not required to expressly outline its reasoning for sentencing, and absent some affirmative indication to the contrary (other than the sentence itself), we must presume that the court considered all mitigating factors on the record. *People v. Perkins*, 408 Ill. App. 3d 752, 762-63 (2011).

¶ 55 There is no dispute that defendant's sentence of 19 years' imprisonment falls within the statutory range of 6 to 30 years' imprisonment, given his prior convictions. A sentence imposed within the statutory range is reviewed for an abuse of discretion. *Alexander*, 239 Ill. 2d at 212. Because defendant's sentence falls within the sentencing range, we may only disturb the sentence if it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Id.* Neither exception applies in this case.

¶ 56 As stated above, the record reflects that the trial court stated that it had considered the evidence at trial; the presentence report and the addendum; defendant's statement in allocution; the victim impact statement; Presley's report and testimony; the arguments of the parties; and the relevant factors in aggravation and mitigation. The trial court noted that the two most compelling factors in aggravation were defendant's prior criminal activity and his status of being on mandatory supervised release at the time the present offense was committed. Despite defendant's argument that no one was injured, the trial court noted that defendant's conduct threatened serious harm in that at least one bullet was found inside the victim's residence and the victim's children had been in the room shortly before the shots were fired. The trial court further commented on defendant's criminal history and the nature of the criminal convictions. The trial court reflected that the present conviction was defendant's sixth felony conviction, "[b]ut more compelling," was that they were "[a]ll violent offenses."

¶ 57 Defendant's criminal history illustrates a resistance to correction (see *People v. Garcia*, 241 Ill. 2d 416, 421-22 (2011)), and defendant's status at the time of the present offense impacted the trial court's decision on his rehabilitative potential (see *People v. Romero*, 387 Ill. App. 3d 954, 981 (2008)). The trial court was not required to give greater weight to defendant's rehabilitative potential than to the seriousness of the offense (see *People v. Phillips*, 265 Ill. App. 3d 438, 450 (1994)), or his prior felony convictions, all described as "violent offenses." The record reflects that the trial court considered the proper sentencing factors, including those presented in mitigation, determined that his supervision status and the threat of serious harm negatively reflected on defendant's potential for rehabilitation, and with his prior violent offenses in his background, militated against a lower sentence. Given the totality of the circumstances, we find no abuse of the trial court's discretion occurred when it imposed a term that fell within the middle of the available sentencing range. See *People v. Bennett*, 329 Ill. App. 3d 502, 517 (2002).

¶ 58 III. CONCLUSION

¶ 59 For the reasons stated, we affirm the judgment of the circuit court of Winnebago County.

¶ 60 Affirmed.