2012 IL App (1st) 092913-U

No. 1-09-2913

SIXTH DIVISION
March 23, 2012

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.	)	No. 08 CR 15920
	)	
RODRICK DOXY,	)	Honorable
	)	Diane Gordon Cannon,
Defendant-Appellant.	)	Judge Presiding.
	)	

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Garcia and Palmer concurred in the judgment.

O R D E R

¶ 1 *HELD*: (1) Defendant was not denied his right to a public trial when a family member was found in contempt of a court order, taken into custody, and barred from re-entering the proceedings; (2) the evidence was sufficient to support defendant's conviction; (3) the trial court

did not improperly restrict the defense's cross-examination or closing argument; and (4) the trial court considered proper aggravating factors at sentencing, and defendant's sentence was not excessive.

¶ 2 Following a jury trial, defendant Rodrick Doxy was convicted of attempted murder and aggravated battery with a firearm and sentenced to 40 years in prison. On appeal, he contends: (1) he was denied his right to a public trial when his aunt was taken into custody and barred from attending the proceedings based on her possession of a cell phone in the hallway of the court building while the jury walked by her; (2) the State failed to prove defendant's guilt beyond a reasonable doubt because the eyewitnesses did not testify that they saw defendant shoot a firearm; (3) the trial court improperly restricted the cross-examination of two State witnesses and the defense's closing arguments; and (4) the trial court relied on improper factors when it imposed an excessive sentence.

¶ 3 For the reasons that follow, we affirm defendant's conviction and sentence.

¶ 4 I. BACKGROUND

¶ 5 The State charged defendant with multiple counts of attempted murder, aggravated battery with a firearm, and aggravated battery in connection with the August 8, 2008 shooting of Kimberly Todd.

¶ 6 One day before trial, a prosecutor informed the court that Todd reported that individuals sent by defendant confronted her to intimidate her and convince her not to testify. The prosecutor asked the trial court to admonish defendant about the seriousness of the matter and that he was being investigated for the threats. The trial court admonished defendant and his

family and friends not to have any contact with anyone involved in the case, including the witnesses and jurors. The court also warned that any threat or contact would be taken seriously and result in criminal charges and incarceration. At the time, defendant's mother and an aunt and uncle were present in court. The court told defendant's uncle to "spread the word" about the warning.

¶ 7 The next day, the judge gave the following warning just before jury selection:

> "As I indicated yesterday to [defendant], obviously [defendant] is in custody. So he's not out on the street intimidating people or having any other dealings with the State witnesses.
>
> If any family or friends of yours are doing that, having any contact whatsoever through another person, through other person, through a phone, through direct contact, they will be charged.
>
> And as I indicated to you yesterday I have a young man doing natural life in the penitentiary. His father is soon to be joining him because while the jury was going on he attempted to have some influence on the jury.
>
> I tell everyone in court today should anybody in this courtroom open their mouth to a witness in this case or a juror, should anyone look at them oddly, they are going into custody.
>
> If anyone has a cell phone in their possession in this courtroom, outside my hall or in this building while this case is pending, you are in contempt of Court and you will be held in custody and tried on you own. Is that clear?

That goes for the State's witnesses, for the defense witnesses, for the State's family members, for the defense family members.

Should anyone have a cellphone, I suggest you leave, put it in a car, go to a store [and] leave it with the owner.

Do not come into this building while this case is pending with a cellphone on or off. Don't come in here with a cell phone.

Don't look at the witnesses outside. Don't look at the jurors. Do not attempt to speak with them in any shape or form.

It is immediate grounds for a mistrial and we start all over again. And you are in jail. You are in jail, if you do that. Contempt of Court.

Are we clear on that? Does anyone not understand that, raise your hand?"

¶ 8 After the jury was selected, the jurors and parties left the courtroom for a lunch recess. In the hallway outside the courtroom, the sheriff accompanied the jury to lunch. While the trial judge walked behind them, she observed Kamilla Clifton, who was defendant's aunt, with a cell phone in her hand. According to the trial judge, Clifton's cell phone was "up and out and on." Clifton was brought into the courtroom, and the judge informed her that she was in direct contempt of court and remanded without bail to the department of corrections. After the lunch break and before opening statements, the trial court informed the parties that it had held Clifton in contempt of court for violating its rule regarding cell phones. Defense counsel did not object or state anything on the record regarding Clifton's removal from the courtroom, and the jury trial then commenced. Clifton's contempt hearing was held two days after defendant's jury trial

concluded.

¶ 9 At the trial, the victim, Kimberly Todd, testified that about 3:50 p.m. on the date of the shooting, she was driving her car southbound on Winthrop Avenue in Chicago, toward Catalpa Avenue. She was pregnant at the time. It was a quiet, residential neighborhood. As she approached a stop sign at the intersection, she saw defendant, whom she had known for about a year. Defendant was standing on the sidewalk about 10 feet to the right of Todd's car. He was wearing a bright-colored shirt and was standing next to another individual. When Todd was stopped at the stop sign, defendant looked in her direction and reached with his right hand under his shirt toward his waistband. Todd thought defendant was going to pull out a gun, so she accelerated. She heard something strike her car and make a "clink" sound. When she got halfway down the block, she felt a burning sensation in her right hand, which was on the bottom of the steering wheel. She saw that her hand was bleeding, put the car in park, and got out to get help.

¶ 10 Todd was hysterical and asked Amy Heimberg, who drove up behind her, to call 911. Heimberg did not have a cell phone, so Todd used her own phone to summon help. A crowd gathered around Todd, and she told someone that she was pregnant and had just been shot. She did not tell the crowd that defendant had shot her because she did not know any of them and thought they could have known defendant or been with him. The police arrived within four minutes, and Todd told an officer that "Rodrick" shot her and she knew him from the neighborhood. Todd was taken to the hospital. Afterward, Todd viewed a line-up at the police station and immediately identified defendant as the person she saw reach under his shirt, as if to

pull out a gun, just before she was shot.

¶ 11 Todd acknowledged that she had prior convictions for drunk driving and possession of a controlled substance with intent to deliver, and that she was currently on probation. She denied that she had been drinking at the time of the shooting and denied that a cup in her car contained alcohol.

¶ 12 Amy Heimberg, a school teacher, testified that she was driving westbound on Catalpa Avenue toward the intersection at Winthrop Avenue at about the same time as Todd. They both stopped at the intersection. Then, as Todd drove away, Heimberg heard a "popping noise," which she thought was a drive-by shooting. As Todd's car entered the intersection, Heimberg saw a young black man of average height standing on the northwest corner of the intersection with a gun in his hand. He fired in the direction of Todd's car, which was in the middle of the intersection and blocked Heimberg's view of the shooter. When Todd's car passed through the intersection, the shooter just stood there pointing the gun in broad daylight. Heimberg focused on the gun and did not recall what the shooter wore. She did not notice anyone standing next to the shooter. Heimberg turned southbound onto Winthrop to avoid driving right past the shooter. She drove up to Todd's car, which was stopped in the middle of the street. Later that same day, Heimberg viewed a line-up at the police station but was not able to identify defendant as the shooter.

¶ 13 Chicago police officer Matthew Cannon arrived on the scene and spoke with Todd, who did not know defendant's last name. However, based on his experience in patrolling the neighborhood, Officer Cannon suspected that Todd was referring to defendant, who lived nearby.

At 4:25 p.m., Chicago police officer Tim Wood located defendant standing outside on the second-floor porch of his residence at 5438 North Kenmore Avenue. Defendant was arrested and taken to the police station. He did not have a weapon with him. A gunshot residue test was administered to defendant at about 6:30 p.m.

¶ 14 An evidence technician testified that three shell casings were found at the intersection. The casings had been fired from the same firearm. Moreover, there was a through-and-through bullet hole in the passenger-side door of Todd's car, and another bullet hole in the driver's-side interior door panel. A fired bullet fragment was recovered at the bottom of that door panel.

¶ 15 Chicago police officer Peter Larcher testified concerning the gunshot residue test he administered to defendant. Before taking samples, Officer Larcher ascertained that defendant was right-handed and had not washed his hands since the time of the shooting.

¶ 16 Ellen Chapman, a trace analyst with the Illinois State Police, testified as a gunshot residue expert. She explained the science behind gunshot residue and the methods used to identify it. She explained, *inter alia*, that three distinct elements were released in the gun smoke when ammunition is discharged from a firearm. The presence of all three elements on the surface of a person's hands indicated that the person either fired the weapon, came into contact with an object that had gunshot residue on it, or was in the environment of a discharged firearm. The minimum threshold for identifying a positive result for gunshot residue was three separate particles, each containing all three elements. Experts recommend that a suspect be tested within six hours of shooting because normal activities may dislodge the particulate matter from a person's hands. Defendant was tested about three hours after the shooting. Chapman determined that he tested

positive for three particles of gunshot residue on his right hand, and none on his left hand. Chapman concluded that defendant had either discharged a firearm, or that he touched or was in the environment of a discharged firearm.

¶ 17 Defendant did not testify.

¶ 18 The jury found defendant guilty of attempted murder and aggravated battery with a firearm. The jury also found that defendant personally discharged the firearm. He was sentenced to a term of 40 years in prison. Defendant appealed.

¶ 19 II. ANALYSIS

¶ 20 On appeal, defendant contends: (1) he was denied his right to a public trial when his aunt was taken into custody and barred from attending the proceedings based on her possession of a cell phone in the hallway of the court building while the jury walked by her; (2) the State failed to prove defendant's guilt beyond a reasonable doubt because the eyewitnesses did not testify that they saw defendant shoot a firearm; (3) the trial court improperly restricted the cross-examination of two State witnesses and the defense's closing argument; and (4) the trial court relied on improper factors when it imposed an excessive sentence.

¶ 21 A. Right to a Public Hearing

¶ 22 Defendant argues he was denied his right under the federal and Illinois constitutions to a public trial when the trial court barred his aunt Kamilla Clifton from attending the proceedings. Defendant clarifies that his public trial argument is not based on the trial court's actual finding of contempt and, thus, does not raise any issue concerning standing. Instead, defendant's public trial argument is based on the "lifetime ban" the trial court imposed on Clifton after her contempt

proceeding was held. According to defendant, the trial court prohibited Clifton from ever entering the criminal court building again and consequently from attending defendant's posttrial proceedings.

¶ 23 According to the record, Clifton was held without bail for direct criminal contempt of court when she violated the trial court's order by using her cell phone in the hallway as the jurors walked by on their way to lunch and in the presence of the trial judge. Two days after the jury had rendered its verdict, Clifton's contempt proceeding was held. When Clifton was brought before the court, she apologized and said she did not deliberately disobey the court's order. The trial court warned Clifton not to lie and stated:

> "it's not the cell phone I'm worried about, the jurors who come down here every day pursuant to a summons and then we have a defendant's family members popping up their cell phones with cameras on them as the jurors are walking down the hall, that's contempt."

¶ 24 Clifton said she knew the sign on the courtroom door warned that cell phones must be turned off but she did not know she could not use her cell phone outside the courtroom. She claimed she was trying to contact her mother about helping Clifton's disabled son get off a bus. The trial judge probed Clifton concerning her excuse, questioning why she would be in court for a gang-shooting hearing if she truly was worried that her disabled child might have to fend for himself. Then, Clifton asserted she was supposed to be at work and had arranged for another family member to look after her son.

¶ 25 The trial court reprimanded Clifton for walking into the hallway as the jurors left the courtroom and flipping open her cell phone with a camera on it. Clifton admitted that her phone had a camera but said she had "no bad intentions." The trial court stated that it was unfortunate if either defendant's family failed to relay to Clifton the trial court's order concerning cell phones or Clifton failed to take that order seriously. The court said:

> "I'm sorry that you didn't understand that I meant what I said, and it's not for me, you could take my picture all you want, ma'am, I really don't care. When citizens come down here to take an oath to listen to the charges against a young man involving a shooting in broad daylight on Chicago city streets, what kind of fear do you think they're going through, how do you think they feel when they're sitting, listening to a man who would open fire in broad daylight and shoot into a car and they've got his family members standing outside after his family members are introduced to that jury, so they know who you are and you're outside my door with a cell phone popped up as they're going over to lunch ***."

¶ 26 Although not formally appointed to represent Clifton, an assistant public defender was permitted to present factors in mitigation, which the trial court took into consideration. Specifically, the court was informed that Clifton was a 34-year-old, divorced mother of three, worked as a nurse's aid for several years, attended college, and had no prior arrests. The trial court told Clifton that it initially intended to sentence her to 150 days in jail, but then the Department of Children and Family Services would have to step in to take care of Clifton's children. Consequently, the court released Clifton from custody, stating:

> "Do not enter this building unless you have a case, do you understand, ma'am? *** Tend to your family, your children, do you understand? *** Or you will be visiting your children as defendants, okay?"

Clifton said that she understood, thanked the judge, and left. Over three months later, proceedings were held on defendant's posttrial motion and sentencing.

¶ 27 On appeal, defendant contends that the trial court imposed a lifetime ban that barred Clifton from entering the criminal court building unless she herself had a case pending. According to defendant, the trial court's ruling prevented Clifton from attending defendant's posttrial proceedings and, thus, constituted a partial closure of the courtroom to a member of defendant's family. Defendant argues the trial court's basis for issuing the lifetime ban has no support under the law and denied him his right to a public trial. Defendant acknowledges that he did not raise this issue in a posttrial motion; nevertheless, he contends that this issue is not forfeited because the lifetime ban ruling occurred outside the presence of defense counsel and two days after the guilt phase of the trial had concluded. As a result, defense counsel was not aware of the partial closure of the trial until defendant appealed and the record was complete.

¶ 28 The sixth amendment of the United States Constitution guarantees a defendant the right to a speedy and public trial. U.S. Const., amend. VI; see also, Ill. Const. 1970, Art. 1, § 8. The sixth amendment protects all portions of the trial, and not just the right to publicly present evidence and witnesses. *People v. Taylor*, 244 Ill. App. 3d 460, 464 (1993); *People v. Cooper*, 365 Ill. App. 3d 278, 282 (2006). While a presumption exists that all trials are open, that right is not absolute. *Waller v. Georgia*, 467 U.S. 39, 45 (1984). The presumption of openness will

yield to an overriding interest that is specifically articulated. *Taylor*, 244 Ill. App. 3d at 468. A full or partial closure of trial proceedings is proper if: it advances an overriding interest that is likely to be prejudiced; the closure is no broader than necessary to protect that interest; the trial court considered reasonable alternatives to closing the proceeding; and the trial court made findings adequate to support the closure. *Waller*, 467 U.S. at 48; *Taylor*, 244 Ill. App. 3d at 467. A defendant need not prove specific prejudice to obtain relief for a violation of his right to a public trial, and the appropriate remedy for improper closure is a new trial. *Taylor*, 244 Ill. App. 3d at 468. The standard to be applied in determining whether there is a sufficient record to support a trial judge's finding that grounds exist to exclude spectators from a courtroom is whether there has been an abuse of discretion. *Cooper*, 365 Ill. App. 3d at 282; *People v. Seyler*, 144 Ill. App. 3d 250, 252 (1986).

¶ 29 The cases relied upon by defendant indicate that violations of the right to a public trial have been found where the trial court has closed proceedings to the public or excluded certain persons from the courtroom based on space limitations or baseless concerns that the presence of defendant's family members in the courtroom would prejudice the jury selection process or intimidate a witness. Those cases are, however, factually distinguishable from the case at bar and are not controlling here. Defendant has not cited any cases which hold that a family member's exclusion from the courtroom based on a finding of direct criminal contempt constitutes a violation of the constitutionally protected right to a public trial.

¶ 30 The record here shows the trial court did not abuse its discretion in taking Clifton into custody upon her violation of the trial court's order concerning the use of cell phones in the

presence of the jurors. Prior to *voir dire*, the trial court warned the parties, their families, and the courtroom observers that any attempt to intimidate the witnesses or jurors would not be tolerated, so no spectator was allowed to have a cell phone, whether it was on or off, in the courtroom, in the hallway outside the courtroom, or in the building. The trial court did not take any action to prevent anyone, including defendant's family members, who complied with the court's cell phone ruling from listening to or observing any portion of the hearing. Because only Clifton was excluded, the closure was no broader than necessary.

¶ 31 The record also establishes that the trial court's ruling that barred Clifton's re-entry to any further proceedings concerning defendant's trial was justified. See *Cooper*, 365 Ill. App. 3d at 282 (the defendant was not deprived of his right to a public trial when certain individuals, including the defendant's mother, were removed from the courtroom and barred from re-entry after they had failed to comply with the court officer's admonishments to refrain from disruptive behavior). Clifton's disruptive conduct challenged the authority of the court and threatened to severely undermine the judicial process. The trial judge saw Clifton violate the cell phone order and did not believe Clifton's excuses for her conduct. The trial court intended to sentence Clifton to 150 days in jail, which would have prevented her from interfering with the court's authority for the rest of defendant's proceedings in this case. However, the trial court exercised leniency and released Clifton from custody after the guilt portion of the trial had concluded but before any posttrial hearing and sentencing proceedings were held. Defendant cites no authority to support the proposition that Clifton should have been allowed re-entry to the remaining proceedings despite the trial court's finding that Clifton had deliberately violated the trial court's order.

¶ 32 Finally, we do not agree with defendant's assertion that the trial court imposed a "lifetime ban" that prohibits Clifton from entering the criminal court building. When read in context, it is clear that the trial judge warned Clifton to stay away from defendant's remaining proceedings and advised her to focus on her responsibilities to her own young children. We conclude that the trial court did not abuse its discretion or violate defendant's right to a public trial.

¶ 33 B. Sufficiency of the Evidence

¶ 34 Defendant argues the State failed to prove his guilt beyond a reasonable doubt because Todd did not see him fire the gun and Heimberg failed to identify defendant as the shooter in a line-up. Furthermore, the small amount of gunshot residue on his hand indicated that he was not the shooter but, rather, merely in the presence of the shooting or had touched the shooter's hand after the shooting. Finally, defendant asserts the jury may not have understood that the State had to prove that defendant was the actual shooter, and the trial court failed to disabuse the jury of that notion.

¶ 35 Criminal convictions are not overturned on review 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). The test to be employed on review 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. *Id.* The jury is charged with the responsibility of weighing the credibility of witnesses and resolving any conflicts and inconsistencies in their testimony, and the jury's determination of a defendant's guilt or innocence is entitled to great deference. *People v. Schott*, 145 Ill. 2d 188, 206 (1991). After reviewing the

evidence in the light most favorable to the State, we find that a rational trier of fact could have found defendant guilty beyond a reasonable doubt.

¶ 36 Todd named defendant as the offender and positively identified him as having reached with his right hand under his shirt toward his waistband–as if he was reaching for a gun–just before she was shot. Todd had known defendant for about one year and she observed him for a sufficient length of time while she was stopped at the stop sign. He was standing on the sidewalk only 10 feet away from her and it was during the daytime. He looked in her direction and reached under his shirt toward his waistband. Todd believed defendant was reaching for a gun, so she sped through the intersection. She immediately heard a bullet strike her car and then realized that she had been shot. Although Todd thought another male was standing with defendant, only defendant made the movement that looked like he was reaching for a gun.

¶ 37 Heimberg corroborated Todd's testimony that the shooter, a young black man, fired a handgun at Todd from the precise location that Todd said defendant had stood. Heimberg did not see anyone else standing with the shooter. Rather, the lone shooter just stood there in broad daylight pointing the gun. Although Heimberg did not identify defendant in a line-up, she explained that the incident happened quickly and Todd's car blocked Heimberg's view of the shooter. Moreover, Heimberg explained that she focused on the gun instead of the shooter and was very upset and wanted to get away from the area.

¶ 38 All the recovered shell casings were fired from the same firearm. Moreover, defendant was arrested about 25 minutes after the shooting and a short distance away. Furthermore, he was found to have gunshot residue on his dominant right hand whereas his left hand tested negative

for the presence of gunshot residue. All the evidence viewed in the light most favorable to the State supported the jury's verdict that defendant personally discharged a firearm and shot Todd.

¶ 39 Defendant claims that the low amount of gunshot residue found on his right hand "more reasonably points to the conclusion that [he] was in the presence of the shooting or that he merely touched the hand of the shooter after the shooting." However, a "jury is not obligated 'to accept any possible explanation compatible with the defendant's innocence and elevate it to the status of reasonable doubt.' " *People v. Evans*, 209 Ill. 2d 194, 212 (2004), quoting *People v. Herrett*, 17 Ill. 2d 195, 206 (1990). The weaknesses in the evidence that defendant cites on appeal were all presented to and rejected by the jury. The jury was charged with making credibility determinations and resolving any inconsistencies in the evidence, and we will not retry defendant on appeal and re-weigh the evidence.

¶ 40 Finally, we find no merit to defendant's contention that the State confused the jury into thinking the State did not have to prove that defendant was the actual shooter. To support this contention, defendant cites to a passage during the defense's closing argument where the trial court overruled an objection by the prosecutor. We have reviewed the passage and find no basis in the record for defendant's contention.

¶ 41 Taking all the evidence in the light most favorable to the prosecution, we cannot say that no rational trier of fact could have found the testimony credible and consistent with the other incriminating evidence and concluded that the essential elements of attempted murder and aggravated battery with a firearm were proved beyond a reasonable doubt.

¶ 42 C. Cross-Examination and Closing Argument

¶ 43 Defendant argues the trial court denied him his right to cross-examine witnesses and present a defense when the court improperly restricted his cross-examination of Todd and the State's gunshot residue expert and prevented defendant from making certain points during closing argument.

¶ 44 A defendant's right to confront the witnesses against him, including cross-examination for the purpose of showing any interest, bias, prejudice or motive to testify falsely, is guaranteed by the federal and state constitutions. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. "The constitutional guarantee and the common law right are separate, and the discretionary authority of the trial court to restrict the scope of cross-examination comes into play after the court has permitted, as a matter of right, sufficient cross-examination to satisfy the confrontation clause." *People v. Leak*, 398 Ill. App. 3d 798, 823 (2010). However, a defendant's rights under the confrontation clause are not absolute; the confrontation clause guarantees an opportunity for effective cross-examination, not cross-examination that is effective in whatever way and to whatever extent the defense desires. *Id*. at 823.

> "To determine the constitutional sufficiency of cross-examination, a court looks not to what the defendant had been prohibited from doing, but to what he had been allowed to do. If the entire record shows that the jury had been made aware of adequate factors concerning relevant areas of impeachment of a witness, no constitutional question arises merely because the defendant had been prohibited on cross-examination from pursuing other areas of inquiry." *People v. Wilson*,

254 Ill. App. 3d 1020, 1045 (1993).

¶ 45 Once the confrontation clause has been satisfied, the scope of cross-examination is within the sound discretion of the trial judge, and a reviewing court will not interfere unless there has been a clear abuse of discretion resulting in manifest prejudice to the defendant. *People v. Green*, 339 Ill. App. 3d 443, 455 (2003). A defendant in a criminal prosecution has the right to cross-examine a witness regarding his bias, interest, or motive to testify falsely; however, the evidence used to establish bias must be timely, unequivocal and directly related, and may not be remote or uncertain. *People v. Sims*, 192 Ill. 2d 592, 624-25 (2000). Counsel's latitude to explore the partiality of a witness is subject to the trial judge's broad discretion to impose reasonable limits on cross-examination to limit possible harassment, prejudice, jury confusion, or repetitive and irrelevant questioning. *People v. Tabb*, 374 Ill. App. 3d 680, 689 (2007). When a line of questioning is objected to or denied by the trial court, the defense must set forth an offer of proof to either convince the trial court to allow the testimony or establish on the record that the evidence was directly and positively related to the issue of bias or motive to testify falsely. *Id.*

¶ 46 First, defendant asserts that the trial court prevented him from cross-examining Todd about whether, at the time of the shooting, she had been drinking alcohol in her car and was carrying a large amount of cash. Defendant argues those questions were important to the defense's attempt to suggest that Todd, who had convictions for driving under the influence and possession of a controlled substance with intent to deliver, was a drug dealer and "had an agenda to not identify the person who really shot her because [defendant] presented less of a threat to her than the real shooter."

¶ 47 Our review of the record establishes that defendant was given more than sufficient opportunity to confront, cross-examine, and test Todd's credibility as a witness. Counsel was permitted to fully cross-examine Todd regarding her ability to recall the incident, the fact that she saw defendant standing with another person, that she did not see defendant holding a gun, and that she did not immediately tell the crowd that gathered that defendant was the shooter. Counsel was also permitted to question Todd about her prior felony convictions and whether she had been drinking at the time of the shooting. Those facts sufficiently placed before the jury the issue of Todd's credibility as a witness. We cannot say that the trial court's ruling violated defendant's right to confront the witness against him.

¶ 48 Defendant complains, however, that he should have been allowed to establish that Todd had $750 with her in order to further portray her as a drug dealer "involved in a dangerous drug milieu" who carried large sums of cash and had an agenda to identify defendant, who was an easy scapegoat, instead of the real shooter.

¶ 49 According to the record, defense counsel asked Todd whether the clear cup of liquid with a straw in it that was in her car at the time of the shooting could have been alcohol, and Todd responded, "No, it could not be." Later, defense counsel asked Todd how much money she had with her at the time of the shooting. The trial court overruled the State's objection based on relevance, and Todd responded that she did not remember. When defense counsel asked,"Could it have been $750?", Todd said, "It could have." When defense counsel repeated, "It could have?" the trial court sustained the State's objection and stated:

> "Stricken. Ladies and gentlemen, there is no evidence that she was drinking. No evidence of alcohol whatsoever. Disregard those questions. We don't do, when did you stop beating your wife, questions here. If she had money on her, she had money on her. *** No evidence she had $750 on her."

The defense did not make an offer of proof and did not ask Todd any further questions. At the end of the trial that day, the trial court, outside the presence of the jury, informed the parties:

> "I want to make it clear, I am sorry if some of you have not done juries before me, in front of me, there is no, ask a bad question, withdrawn. We don't do that. Okay? Either side.
>
> If you pull that, you will be sorry. Okay. So, do not ask improper questions. Because not only are they improper, they are not doing anybody any good from either side.
>
> So, there is no asking questions that are improper and then withdrawing them. Listen to what the witness is saying on direct examination and cross-examine them according to what they said."

¶ 50 The trial court properly struck defendant's repetitive question about the amount of money Todd was carrying. The trial court also properly instructed the jury to disregard the defense's questions that attempted to suggest Todd had an open cup of alcohol in her car at the time of the shooting. There was no evidence that the beverage in Todd's car was alcohol, and the defense made no offer of proof regarding either the amount of money or any alcohol to inform the court of the nature and substance of any evidence it sought to introduce. Because nothing in the record

indicates the trial court prevented defense counsel from making a complete and accurate offer of proof, defendant has forfeited review of this claim. *People v. House*, 197 Ill. App. 3d 1017, 1022-23 (1990). Even assuming *arguendo* that the issue had been properly preserved and the trial court erred in its ruling, we find that the limitation of the cross-examination of Todd was not sufficiently prejudicial to warrant a new trial. The evidence concerning Todd's convictions of drunk driving and possession with intent to deliver cocaine was presented to the jury. Furthermore, the trial court's rulings did not prevent the defense from arguing to the jury the theory that Todd was a convicted drug dealer and was too afraid to name the shooter, who was a dangerous drug-dealing competitor, so Todd made defendant the fall guy.

¶ 51 Next, defendant asserts that the trial court improperly restricted his cross-examination of Chapman, the State's gunshot residue expert, and thereby prevented defendant from presenting a defense concerning the unreliability of gunshot residue analysis.

¶ 52 According to the record, during opening statements, defense counsel told the jury that some law enforcement agencies and the FBI did not rely on gunshot residue testing. Then, prior to Chapman's testimony, the State moved to preclude the defense from referencing during Chapman's cross-examination newspaper articles or specific gunshot residue studies–as opposed to learned treatises–without the defense calling its own expert to give credence to those articles or studies. The trial court ruled that any learned treatise and anything the expert relied upon in making her opinion was admissible, but if the defense wanted a witness to testify that gunshot residue tests were worthless and the FBI did not believe in them anymore, then the defense would need to call such a witness. The trial court also said:

> "You [the defense] can rely on whatever you want, but call the witness. Don't say what other experts studies that other people have done. Whatever she relied upon or he has relied upon. *** [A]nything [Chapman] has done, any studies that [she] has conducted is certainly cross-examinable. *** But, you know, word on the street is not coming out through this witness. *** And other studies are not coming out with that witness did not partake in. If she uses them to form her expert opinion or he uses them to form his expert opinion, then they are admissible."

¶ 53 On cross-examination, Chapman stated that the main laboratory of the FBI did not do gunshot residue analysis anymore. When defense counsel asked if Chapman was aware that the Boston police department no longer did gunshot residue analysis, the trial court sustained the State's objection, and defense counsel did not make any offer of proof or ask any further questions. On redirect, Chapman explained that the FBI stopped doing gunshot residue analysis–not because the FBI did not believe in the science–but because the testing became commonplace and it was cost effective for regional laboratories to do the analysis. Chapman also testified that gunshot residue analysis was commonly accepted in the scientific community by the FBI and every other law enforcement agency. Defense counsel did not pursue that line of questioning on re-cross.

¶ 54 On appeal, defendant asserts that the trial court, based on its ruling on the State's motion *in limine*, improperly sustained the State's objection when defense counsel asked Chapman whether the Boston police department utilized gunshot residue testing. According to defendant,

Chapman was never given an opportunity to either affirm or deny whether the information concerning the Boston police department's view of gunshot residue testing was correct or not. Defendant complains that he was denied his right to cross-examine Chapman and present a defense concerning the unreliability of gunshot residue tests due to the trial court's erroneous understanding of the law concerning what material or questions were fair game in the cross-examination of experts.

¶ 55 The trial court should allow wide latitude in cross-examining an expert, but that cross-examination should generally be limited to matters raised on direct examination. *People v. Jackson*, 182 Ill. 2d 30, 78 (1998). The trial court's judgment as to whether an area falls within the proper scope of cross-examination is not disturbed on review unless there has been a clear abuse of discretion resulting in manifest prejudice to the defendant. *Id*. at 79. "[C]ross-examination of an expert with reference to a recognized text or treatise is proper where either the court has taken judicial notice of the author's competence or, absent concession by the witness, the cross-examiner proves the text or treatise is authoritative." *People v. Johnson*, 206 Ill. App. 3d 875, 879 (1990).

¶ 56 Here, the trial court mistakenly suggested that Chapman could not be cross-examined on studies or articles upon which she did not rely. That suggestion, however, was not the trial court's basis for precluding defendant's question about the Boston police department and, thus, is irrelevant to the issue raised on appeal. Contrary to defendant's argument on appeal, the trial court properly sustained the State's objection to the Boston police department question because defendant posed that question based on an alleged anecdotal fact rather than an authoritative

publication. Furthermore, defendant did not make any offer of proof to indicate that some recognized or authoritative text existed regarding a particular law enforcement group's negative view of gunshot residue testing. *People v. Andrews*, 146 Ill. 2d 413, 420-21 (an adequate offer of proof in the trial court must be made to preserve for review an alleged error in the exclusion of evidence). In the absence of an adequate offer of proof on this issue, a reviewing court cannot speculate about the admissibility of the testimony that was foreclosed by the sustained objection or assess any alleged prejudice. *Id*. at 421; *Leak*, 398 Ill. App. 3d at 824.

¶ 57 Even assuming *arguendo* that the issue had been properly preserved and the trial court erred by that limitation on the cross-examination of Chapman, the precluded cross-examination was not sufficiently prejudicial to warrant a new trial. Chapman testified that gunshot residue analysis was commonly accepted in the scientific community by the FBI and every other law enforcement agency. Furthermore, the record establishes that the defense extensively questioned Chapman about her inability to eliminate the possibility that defendant was merely in the presence of a fired gun or had touched either the hand of the actual shooter or an object that the shooter had touched.

¶ 58 Next, defendant claims the trial judge continued to undercut the theories of the defense during closing argument when the trial court improperly *sua sponte* struck his argument that the victim simply identified defendant as the shooter because he was "just a kid from the neighborhood" and he was "not that dangerous."

¶ 59 Defendant's account of the trial court's ruling is not accurate. According to the record, the defense was given wide latitude to argue to the jury that Todd was "a convicted drug dealer" who

had "an agenda" and operated in a "very dangerous world" and was "afraid of [her] competition." Defense counsel also argued that Todd had "a reason not to name the real shooter" and "had to come up with a fall guy," so she "came up with a kid from the neighborhood." The record clearly shows that the trial court struck only counsel's argument that defendant "is not that dangerous." That statement was properly stricken because it was unsupported by the evidence and it erroneously suggested that defendant, who did not testify, had no criminal background. See *People v. Simms*, 192 Ill. 2d 348, 396 (2000) (closing argument is not a forum for introducing evidence, and a trial court properly instructs the jury to disregard such inappropriate remarks). The trial court did not prevent defendant from fully arguing his theory of misidentification to the jury.

¶ 60 Furthermore, defendant argues the trial court improperly struck his argument that if defendant had been the shooter, he would have been inside his house getting clean and ridding himself of any gunshot residue. Specifically, the trial court *sua sponte* objected to that argument and then erroneously instructed the jury that there had been no evidence presented as to where defendant had lived.

¶ 61 We agree that the trial court improperly struck that argument because a police officer had testified that defendant lived at the address of his arrest. This error, however, was harmless where the evidence of defendant's guilt, as summarized above, was not close. Moreover, the stricken argument was subsidiary to defendant's main argument–which counsel fully made to the jury–that defendant had a minuscule amount of gunshot residue on his hands shortly after the shooting. See *People v. Faria*, 402 Ill. App. 3d 475, 483 (2010) (although the trial court

interrupted and challenged counsel during closing arguments, where defendant "was permitted to argue his theory of the case," no error occurred).

¶ 62 Finally, defendant claims the trial court's demeaning comments regarding the defense's theory of the case during both the trial and closing arguments was also error.

¶ 63 A trial judge is presumed to be impartial, and the burden of overcoming this presumption rests on the party making the charge of prejudice. *Id.* at 482. Allegations of judicial bias or prejudice must be viewed in context and should be evaluated in terms of the trial judge's specific reaction to the events taking place. *People v. Jackson*, 205 Ill. 2d 247, 277 (2001). A judge's display of displeasure or irritation with an attorney's behavior is not necessarily evidence of judicial bias against the defendant or his counsel. *Id.* Our review of the record establishes that the trial court never made derogatory remarks expressing bias or prejudice against the defense, and defendant was fully permitted to argue his theory of misidentification theory to the jury.

¶ 64 D. Sentencing

¶ 65 Finally, defendant contends the trial court relied on improper aggravating factors at sentencing and abused its discretion by imposing an excessive sentence. Specifically, defendant argues the trial court erroneously referred to his delinquency adjudications as convictions and improperly considered that the victim was pregnant. Defendant also argues the trial court failed to adequately consider his rehabilitative potential.

¶ 66 Defendant failed to preserve these claims for review by including them in his post-sentencing motion. See *People v. Terrell*, 185 Ill. 2d 467, 516 (1998) (specificity in post-sentencing motion is required to properly preserve a claim). Such forfeiture notwithstanding, we

find no error or abuse of discretion in the 40-year prison term imposed by the trial court.

¶ 67 A trial court's sentencing decision is entitled to great deference and weight. *People v. Streit*, 142 Ill. 2d 13, 18 (1991). The trial court is in a superior position to fashion an appropriate sentence because the trial judge can make a reasoned judgment based on firsthand consideration of such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits and age. *Id*. at 19. A sentence within the statutory range is presumed to be proper and will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Fern*, 189 Ill. 2d 48, 54 (1999).

¶ 68 In determining an appropriate sentence, the seriousness of the offense or the need to protect the public may outweigh any mitigating factors and the goal of rehabilitation. *People v. Hindson*, 301 Ill. App. 3d 466, 475 (1998); *People v. Evans*, 373 Ill. App. 3d 948, 968 (2007). Aggravating factors that may be considered include whether the defendant's conduct caused or threatened serious harm and the defendant's history of prior delinquency or criminal activity. 730 ILCS 5/5-5-3.2(a) (West 2008); see also *People v. Helm*, 282 Ill. App. 3d 32, 35 (1996) ("[a]n aggravating factor may be related to the nature and vulnerability of the victim"). A sentencing court is entitled to "have before it the fullest information possible regarding the defendant's life," including his criminal history and his prior juvenile adjudications. *People v. Johnson*, 128 Ill. 2d 253, 282-84 (1989).

¶ 69 Here, defendant was subject to a minimum sentence of 26 years in prison and a maximum of 50 years because he was convicted of attempted first degree murder by personally discharging

a firearm. 720 ILCS 5/8-4(c)(1)(C) (West 2008); 730 ILCS 5/5-4.5-25(a) (West 2008). When the trial court described defendant's entire criminal history, the court once used the term *convictions* instead of *adjudications*. That misstatement, however, was not significant given the trial court's explicit references to defendant's "juvenile history," "juvenile court," and "juvenile judges." See *People v. Bourke*, 96 Ill. 2d 327, 332 (1983) (remandment is not required if the record establishes that the weight placed on an improperly considered aggravating factor was so insignificant that it did not lead to a greater sentence). The record establishes that the trial court did not confuse defendant's juvenile court adjudications with adult convictions.

¶ 70 Furthermore, the trial court's consideration of Todd's pregnancy was not improper. The trial court was entitled to consider the seriousness of defendant's offense when fashioning an appropriate sentence, including the threatened serious harm. The trial court noted the egregious facts of the shooting and the risk of harm to others when defendant, in a residential neighborhood and in broad daylight while people were driving home from work, aimed a gun into traffic and started shooting at cars. When defendant fired his gun at Todd's car, he could have killed her, her unborn child, and other people near the intersection. All of this was entirely proper for the trial court to consider.

¶ 71 Finally, defendant's contention that the trial court failed to consider his rehabilitative potential lacks merit. According to the record, the trial court expressly considered defendant's youth and stated that he was "not a lost cause." The trial court noted that defendant essentially had been "raised in juvenile court," and been "given opportunity after opportunity after opportunity after opportunity." However, despite those opportunities, defendant engaged in drug

dealing and violent offenses including a robbery and a shooting.

¶ 72 We find no abuse of discretion in the imposition of a 40-year prison term where the trial court considered the seriousness of the offense, the need to protect the public, the factors in aggravation and mitigation, the pre-sentence investigation report, the letter written by defendant's mother, and defendant's youth and rehabilitative potential.

¶ 73 III. CONCLUSION

¶ 74 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 75 Affirmed.