2011 IL App (1st) 101113-U

FIRST DIVISION
December 19, 2011

No. 1-10-1113

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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.	)	No. 07 CR 10398
	)	
PAUL SANCHEZ,	)	Honorable
	)	Timothy J. Joyce,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Karnezis concurred with the judgment.

O R D E R

¶ 1 ***HELD:*** Defendant's convictions and sentences affirmed, where: (1) he was proven guilty of first degree murder and attempted first degree murder beyond a reasonable doubt; (2) his assertion of ineffective assistance of counsel was based upon speculative claim of prejudice; and (3) his contention that his aggregate, 71-year sentence was unconstitutionally disproportionate was unfounded.

¶ 2 Following a jury trial, defendant, Paul Sanchez, was convicted of both first degree murder and attempted first degree murder and was sentenced to a total of 71 years' imprisonment. On appeal, defendant asserts: (1) he was not proven guilty beyond a reasonable doubt; (2) his trial counsel provided ineffective assistance by failing to question potential jurors about their possible

bias against gang members; and (3) his sentence was unconstitutional because it resulted from the imposition of multiple statutorily mandated firearm-related sentencing enhancements. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In May of 2007, defendant was charged by indictment with multiple counts of first degree murder, attempted first degree murder, and aggravated discharge of a firearm. The indictment generally alleged that on April 19, 2007, defendant–while armed with a firearm–shot and killed Sylvester Jackson and shot at Brandon Stepney with the intent to kill him. The matter proceeded to a jury trial in October of 2009.

¶ 5 Prior to the introduction of evidence, the State presented a motion *in limine* seeking leave to admit evidence of the defendant's gang affiliation to establish motive. Specifically, the State sought to admit evidence that defendant was a member of the Latin Kings street gang, defendant had a plan to go "joy riding" in order to locate members of a rival street gang (the Latin Dragons), and defendant shot at Mr. Jackson and Mr. Stepney only after mistakenly identifying them as members of the Latin Dragons. The trial court granted the State's motion and allowed the introduction of this evidence over defense counsel's objection.

¶ 6 At trial, Mr. Stepney testified that on April 19, 2007, he and Mr. Jackson were driving in two separate cars in the Hegewisch neighborhood on the southeast side of Chicago. The two had become lost, and found themselves in an unfamiliar area. With Mr. Stepney in the lead and Mr. Jackson following, they proceeded to a stop sign at 131st Street and Baltimore Avenue.

¶ 7 While stopped at that intersection, Mr. Stepney heard a loud pop and initially thought it was

a rock hitting his windshield. He turned the radio down and heard two to four more pops go through his car before realizing they were gunshots. Mr. Stepney bent down, leaned toward the passenger seat, and then drove across the street into the oncoming traffic lane. As he pulled away, he heard approximately seven more gunshots behind him. At the same time, he heard Mr. Jackson's car pull out and saw it speed down Baltimore Avenue ahead of him.

¶ 8 Mr. Stepney followed Mr. Jackson for a few blocks before Mr. Jackson's car veered off and ran into a lane of parked cars. Mr. Stepney stopped his car and ran over to Mr. Jackson, who was no longer breathing and had no pulse. Mr. Stepney testified he did not know where the gunshots came from, nor could he identity the shooter. Furthermore, at no time did either he or Mr. Jackson have any weapons or have any interaction with the shooter.

¶ 9 Luis Rojas was originally charged along with defendant with first degree murder and attempted first degree murder in the same underlying indictment. He testified after agreeing to plead guilty to aggravated discharge of a firearm and conspiracy to commit murder in exchange for his testimony at defendant's trial and a recommended sentence of seven years' imprisonment.

¶ 10 Mr. Rojas testified he was driving his father's black, two-door Nissan on April 19, 2007, when he picked up his friends Michael Urbano, Israel Munoz, and defendant, all members of the Latin Kings street gang. Mr. Munoz and Mr. Urbano sat in the back seat of the car and defendant sat in the front-passenger seat. As defendant entered the car, Mr. Rojas noticed a black silhouette through defendant's shirt which Mr. Rojas believed to be a gun.

¶ 11 Mr. Rojas proceeded to drive, and defendant soon pulled out the gun and indicated they were all going to go for a "joy ride." According to Mr. Rojas, this meant they were going to look for rival

gang members. After he pulled out the gun, defendant passed it to the backseat, but Mr. Rojas did not see who took it. Defendant then directed Mr. Rojas where to drive, and they ultimately ended up in the Hegewisch neighborhood.

¶ 12 At around 3:30 p.m., they were driving south on Baltimore Avenue. As they approached 131st Street, defendant yelled out "Ds, Ds, Ds," and pointed in the direction of two vehicles. Mr. Rojas testified "Ds" stood for Latin Dragons, a rival street gang of the Latin Kings. As defendant pointed at the first vehicle, Mr. Munoz passed defendant the gun from the backseat. Defendant then fired several shots at the first vehicle, which continued to move straight ahead. The second vehicle followed, and defendant fired another burst of rounds as Mr. Rojas made a left turn onto 131st Street. Mr. Rojas continued traveling east on 131st Street when he noticed a black Hummer SUV chasing after him. He turned around in a gas station and lost sight of the Hummer. As they were driving, defendant passed the gun to the backseat, where Mr. Munoz placed it in the rear of the car. Mr. Munoz, Mr. Urbano, and defendant soon exited the car and Mr. Rojas began to drive home. Shortly thereafter, a police cruiser stopped Mr. Rojas. Mr. Rojas told the officers he was not the shooter and the gun was hidden in the back of the car. Mr. Rojas was arrested and taken to a police station where he told the detectives defendant was the shooter.

¶ 13 Michael Urbano testified that on April 19, 2007, Mr. Rojas picked him up sometime in the afternoon. Mr. Munoz was already in the car. The three shared one "blunt" that was filled with a small amount of cannabis, but Mr. Urbano testified the blunt did not impair him and he was still aware of what was occurring at the time. When they subsequently picked up defendant, Mr. Urbano did not see a black silhouette beneath his shirt. Rather, Mr. Urbano testified that later, at defendant's

request, Mr. Munoz retrieved the gun from inside of his house.

¶ 14 Around 3:00 p.m., Mr. Urbano was riding in the rear passenger-side seat of Mr. Rojas' car, directly behind defendant and next to Mr. Munoz. All four were driving around looking for rival gang members to "tempt" them, meaning to scare or hurt them. Mr. Urbano testified it was Mr. Munoz's and defendant's idea to look for rival gang members, and that defendant said "let's go look for some Ds," meaning Latin Dragons. At around 3:30 p.m., they were driving in the Hegewisch neighborhood when defendant said, "there are some Ds in back of us." At that point, Mr. Munoz handed defendant the gun from the back seat. Mr. Urbano saw defendant point the gun out of the car window and begin shooting at a car to the right. A second car pulled behind the first, and defendant then began shooting at that vehicle. Defendant fired at least six shots at the second car before Mr. Rojas turned east on 131st Street.

¶ 15 As they drove away, defendant gave Mr. Munoz the gun and Mr. Munoz placed it in the left-rear speaker compartment of the car. Mr. Urbano testified he, Mr. Munoz and defendant all exited Mr. Rojas' car and went in separate directions. Mr. Urbano was eventually stopped by the police, who placed him under arrest and took him to a police station. Once there, Mr. Urbano identified defendant as the shooter.

¶ 16 Chicago police Officer Alex Guerrero testified he and his partner were driving to work in his partner's Hummer SUV when they observed the shooting. Officer Guerrero saw a handgun coming out of the passenger-side window of a black, two-door Nissan and observed several shots being fired at another vehicle nearby. Officer Guerrero did not see the face of the shooter, but he did observe the shooter was the occupant of the front-passenger seat. After his partner called dispatch and gave

a description of the incident and the shooter's vehicle, they continued to follow it east until it turned around at a gas station. Officer Guerrero quickly lost sight of the Nissan.

¶ 17 Finally, the State introduced additional forensic, medical, and DNA evidence via testimony and by stipulation. In general the State's evidence indicated: (1) Mr. Jackson died as a result of multiple gunshot wounds; (2) bullets and shell casings recovered from the scene of the shooting were fired from the handgun recovered from Mr. Rojas' vehicle at the time of his arrest; (3) no fingerprints suitable for comparison were found on the recovered handgun, but gunshot residue tests on Mr. Rojas and Mr. Urbano following their arrest were negative; (4) DNA testing of samples recovered from the recovered handgun indicated the presence of at least three DNA profiles; (5) while defendant could not be excluded from contributing to one of the profiles contained in that DNA sample, it was a statistically "weak association" because that profile would be expected to occur in approximately 1 in 36 African Americans, 1 in 28 Caucasians, or 1 in 14 Hispanic unrelated individuals.

¶ 18 The defense did not present any evidence. At the conclusion of trial, the jury found defendant guilty of first degree murder, attempted first degree murder, and aggravated discharge of a firearm. The jury also specifically found defendant personally discharged a firearm during the commission of the offense of first degree murder. Defendant filed an unsuccessful motion for a new trial, and the matter proceeded to sentencing.

¶ 19 Following a sentencing hearing, the trial court first found defendant's conviction for aggravated discharge of a firearm merged with his conviction for attempted first degree murder. The trial court, thereafter, sentenced defendant to a minimum term of 45 years' imprisonment for first

degree murder and 26 years' imprisonment for attempted first degree murder. The trial court indicated that–pursuant to statute–each conviction resulted from an enhancement due to defendant's use of a firearm and that the sentences must run consecutively. Defendant's motion to reconsider his sentence was denied, and he now appeals.

¶ 20 II. ANALYSIS

¶ 21 As noted above, on appeal, defendant asserts he was not proven guilty beyond a reasonable doubt, his trial counsel provided ineffective assistance, and his sentence was unconstitutional. We address each argument in turn.

¶ 22 A. Reasonable Doubt

¶ 23 We first address defendant's challenge to the sufficiency of the evidence supporting his convictions.

¶ 24 When presented with such a challenge, it is not the function of this court to retry defendant and we review the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). The jury's findings are entitled to great weight, given that it is in the best position to judge the credibility and demeanor of the witnesses. *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). As such, a reviewing court will not substitute its judgment for that of a jury on issues involving the weight of evidence or the credibility of witnesses. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). A reversal is warranted only if the evidence is so improbable or unsatisfactory, it leaves a reasonable doubt regarding the defendant's guilt. *Evans*, 209 Ill. 2d at 209.

¶ 25 Section 9-1(a)(1) of the Criminal Code of 1961 provides:

> "(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 ***." 720 ILCS 5/9-1(a)(1) (West 2006).

The Criminal Code further provides, a "person commits the offense of attempt when, with intent to commit a specific offense, he *** does any act which constitutes a substantial step toward the commission of that offense." 720 ILCS 5/8-4(a) (West 2006). Thus, a successful prosecution for attempted first degree murder must include proof beyond a reasonable doubt that a defendant, with the specific intent to kill, commits any act that constitutes a substantial step toward the commission of murder. *People v. Johnson*, 368 Ill. App. 3d 1146, 1157 (2006). This court has only recently noted that an intent to kill can be inferred from the act of firing bullets in the direction of an occupied car. *People v. Garcia*, 407 Ill. App. 3d 195, 201 (2011).

¶ 26 Here, the evidence presented at trial clearly established the required elements of first degree murder and attempted first degree murder beyond a reasonable doubt. Both Mr. Rojas and Mr. Urbano testified they, Mr. Munoz, and defendant were all driving around looking for rival gang members at the time of the shooting. Both also testified defendant, sitting in the front-passenger seat of the black Nissan, shot at the cars occupied by Mr. Jackson and Mr. Stepney after incorrectly identifying them as members of the rival Latin Dragon street gang. This testimony was corroborated by Officer Guerrero, who testified he observed the shooting and identified the front passenger of the

black Nissan as the shooter. This testimony was further corroborated by other evidence introduced at trial, including evidence Mr. Jackson died as a result of gunshot wounds he suffered during the shooting, the gun recovered from Mr. Rojas' car was used in the shooting, defendant's DNA profile could not be excluded from a sample recovered from that gun, and neither Mr. Rojas or Mr. Urbano tested positive for gunshot residue when they were tested following their arrest shortly after the shooting.

¶ 27 Nevertheless, defendant raises a number of challenges to the State's evidence. First, defendant contends because Mr. Rojas was originally a codefendant and testified pursuant to a plea agreement–which included a reduction in the charges against him and a recommended seven-year sentence–"his testimony naming [defendant] as the shooter is inherently suspect and this Court should not accept it." In support of this position, defendant notes our supreme court has stated "accomplice testimony 'is fraught with serious weaknesses such as the promise of leniency or immunity and malice toward the accused' [citation], and should therefore be accepted only with utmost caution and suspicion and have the absolute conviction of its truth." *People v. Newell,* 103 Ill. 2d 465, 470 (1984) (quoting *People v. Wilson*, 66 Ill. 2d 346, 349 (1977)).

¶ 28 We reject defendant's attempt to challenge Mr. Rojas' testimony on this ground. We note the jury below was made aware of Mr. Rojas' plea agreement and was specifically instructed that any accomplice testimony "is subject to suspicion and should be considered by you with caution. It should be carefully examined in light of the other evidence in this case." As we have already stated, it is for the trier of fact below to determine the credibility of witnesses and a reviewing court will not reverse a conviction simply because a defendant claims a witness was not credible. S*iguenza-Brito,*

235 Ill. 2d at 228. Here, having been apprised of all the relevant facts, properly instructed, and having had an opportunity to observe Mr. Rojas' demeanor in court, the jury was free to judge Mr. Rojas' credibility. We see no reason to disturb the jurors' judgment on appeal.

¶ 29 Moreover, as the case cited by defendant itself notes, "the uncorroborated testimony of an accomplice is sufficient to sustain a conviction if such testimony convinces the jury of defendant's guilt beyond a reasonable doubt." *Newell*, 103 Ill. 2d at 469-70. Here, not only was Mr. Rojas apparently found to be credible, his testimony was corroborated by the eyewitness testimony of both Mr. Urbano and Officer Guerrero, as well as by the physical evidence presented by the State.

¶ 30 Defendant next asserts his convictions cannot stand due to inconsistencies in the testimony of Mr. Rojas and Mr. Urbano. Specifically, defendant notes–prior to trial–Mr. Rojas never told the police he saw a silhouette of a gun under defendant's shirt when he entered the car. Furthermore, defendant highlights the fact that Mr. Rojas gave police a somewhat unclear and inconsistent testimony with respect to whether defendant held onto the gun the entire time he was in the car, or whether the gun was passed back and forth between defendant and the backseat passengers. Defendant also points to the fact that, while Mr. Rojas testified he picked up defendant, Mr. Urbano and Mr. Munoz at the same time, Mr. Urbano testified that Mr. Munoz was already in the car when Mr. Rojas picked him up and defendant was not picked up until a few hours later. Finally, in contrast to Mr. Rojas, Mr. Urbano testified defendant did not enter the car with the gun but, rather, Mr. Munoz subsequently retrieved the weapon from his home.

¶ 31 We disagree with defendant's contention that any of these inconsistencies cast doubt upon his convictions. As this court has previously recognized, it "is not the role of this court to reevaluate

the credibility of witnesses in light of inconsistent testimony and ostensibly retry the defendant on appeal. [Citation.] Whether minor inconsistencies in testimony irreparably undermined the credibility of the State's witnesses was a matter for the trier of fact to decide." *People v. Howard*, 376 Ill. App. 3d 322, 329 (2007). As such, a "reviewing court will not reverse a conviction simply because the evidence is contradictory ***." *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 32 Here, while there may have been some inconsistencies in the testimony of Mr. Rojas and Mr. Urbano, none of those inconsistencies involved the fundamental elements of the crimes for which defendant was charged. Mr. Rojas and Mr. Urbano each consistently testified defendant was riding in the front-passenger seat of Mr. Rojas' car while they were all looking for rival gang members, that defendant was in possession of the handgun at the time of the shooting, and it was defendant who fired several shots into the cars occupied by Mr. Stepney and Mr. Jackson after incorrectly identifying them as members of the Latin Dragons. Thus, we will not reevaluate the appropriate weight to give to the witnesses' testimony on appeal, especially "given the consistency with which they testified to the essential elements of the offenses" for which defendant was charged. *Howard*, 376 Ill. App. 3d at 330.

¶ 33 Defendant next makes a brief assertion that "any testimony from Rojas and Urbano is inherently suspicious" because the evidence established they were under the influence of marijuana at the time of the shooting. In support of this argument, defendant cites to our supreme court's recognition that " '(t)he question of whether a witness is a narcotics addict is an important consideration in passing upon the credibility of a witness for *** the testimony of a narcotics addict is subject to suspicion due to the fact that habitual users of narcotics become notorious liars.' "

People v. Strother, 53 Ill. 2d 95, 99 (1972) (quoting *People v. Lewis*, 25 Ill. 2d 396, 399 (1962)).

¶ 34 We reject this contention as well, as there was nothing in the record to indicate either Mr. Rojas or Mr. Urbano were narcotics addicts or even habitual users of narcotics. Rather, Mr. Urbano testified he, Mr. Rojas, and Mr. Munoz shared one "blunt" with each other a few hours before the shooting. He stated the blunt contained only a small amount of cannabis, that it did not impair him, and he was still aware of what was going on at the time of the shooting. Again, the jury was aware of all this testimony and were entitled to make a determination as to what impact, if any, it had on the overall credibility of Mr. Rojas and Mr. Urbano.

¶ 35 Finally, we address defendant's reliance on *People v. Washington*, 375 Ill. App. 3d 1012 (2007), in support of his contention the State's evidence did not support his convictions. In that case, the evidence established that in July of 2004, the defendant and three other men were driving around in a van listening to music, smoking marijuana, and drinking alcohol. *Id*. at 1021. At some point, the van stopped and someone from inside the van fired a gun at another car, hitting the driver in the arm. *Id*. at 1013-14. At trial, the three alleged accomplices testified inconsistently as to who actually shot the victim. *Id*. at 1025. On appeal, defendant's conviction for attempted murder was reversed because there was "no remotely consistent account of the events that occurred on July 4, 2004, or defendant's role in them." *Id*. at 1029.

¶ 36 We find *Washington* to be easily distinguishable. Unlike the accomplices in *Washington*, Mr. Rojas and Mr. Urbano consistently named defendant as the shooter and consistently placed defendant in the front-passenger seat of Mr. Rojas' car. This testimony was corroborated by Officer Guerrero, who testified it was the person in the front-passenger seat that fired at the cars occupied by Mr.

Stepney and Mr. Jackson. The State also introduced DNA evidence supportive of its theory defendant was the shooter, and the gunshot-residue test results tended to exclude either Mr. Rojas and Mr. Urbano as the shooter. The situation in this case was, therefore, far different from the one presented in *Washington*, where the appellate court specifically noted there was no objective evidence of the identity of the shooter and identification rested solely on the inconsistent testimony of the defendant's accomplices. *Id.* at 1025.

¶ 37 In sum , we find the evidence presented here was not so improbable or unsatisfactory that it leaves any doubt of defendant's guilt. *Evans*, 209 Ill.2d at 209.

¶ 38 B. Ineffective Assistance

¶ 39 Next, we consider defendant's assertion that his trial counsel provided ineffective assistance by failing to question potential jurors about their possible bias against gang members.

¶ 40 A claim of ineffective assistance of counsel is judged according to the two-prong test established in *Strickland v. Washington*, 466 U.S. 668 (1984). See *People v. Lawton*, 212 Ill. 2d 285, 302 (2004). In order to obtain relief under *Strickland*, a defendant must prove defense counsel's performance fell below an objective standard of reasonableness and this substandard performance caused defendant prejudice by creating a reasonable probability that, but for counsel's errors, the trial result would have been different. *People v. Wheeler*, 401 Ill. App. 3d 304, 313 (2010). While the defendant must establish both prongs of this two-part test, a reviewing court need not address counsel's alleged deficiencies if the defendant fails to establish any prejudice. See *Strickland*, 466 U.S. at 687; *People v. Edwards*, 195 Ill. 2d 142, 163 (2001).

¶ 41 Here, defendant claims that because his counsel failed to question whether any juror could

evaluate his case fairly despite defendant's gang affiliation, he was denied his right to be tried by a fair and impartial jury. However, defendant does not allege that any juror displayed actual or potential bias toward gang members, nor does he point to any evidence in the record that might support such an allegation. Thus, defendant's assertion of ineffective assistance of counsel is based upon nothing more than conjecture and speculation. As our supreme court has held, "*Strickland* requires actual prejudice be shown, not mere speculation as to prejudice." *People v. Bew*, 228 Ill. 2d 122, 135 (2008).

¶ 42 Moreover, the record *does* reflect that all of the jurors who served in this case either indicated they could be fair and impartial when so questioned by the judge, or when further questioned in that regard by defense counsel. This court has previously rejected similar claims of ineffective assistance of counsel, in part, on the basis of such a record. *People v. Powell*, 355 Ill. App. 3d 124, 142 (2004) (rejecting claim of ineffective assistance where, "though the jurors were not asked specifically about their opinion on gangs and gang members, each juror told the court that he or she would be able to decide the case fairly by applying the law provided by the court to the facts presented by the parties."); *People v. Benford*, 349 Ill. App. 3d 721, 734 (2004) (rejecting similar argument because it "dismisses the fact that the jurors each agreed that they could decide the case fairly ***.").

¶ 43 As such, we must reject plaintiff's claim that he was rendered ineffective assistance of counsel.

¶ 44 C. Sentencing

¶ 45 Finally, we consider defendant's challenge to his aggregate 71-year sentence. On appeal, defendant notes this sentence results from: (1) mandatory statutory-firearm enchantments being

applied to his sentences for first degree murder and attempted first degree murder; and (2) a statutory provision mandating that these two sentences be served consecutively. Defendant contends the "confluence" of the applicable sentencing provisions renders his sentence unconstitutional under the proportionate penalties clause of the Illinois Constitution.

¶ 46 As our supreme court has recognized:

> "The constitutionality of a statute is purely a matter of law, and accordingly we review the circuit court's conclusion *de novo*. [Citation.] All statutes carry a strong presumption of constitutionality. [Citation.] To overcome this presumption, the party challenging the statute must clearly establish that it violates the constitution. [Citation.] We generally defer to the legislature in the sentencing arena because the legislature is institutionally better equipped to gauge the seriousness of various offenses and to fashion sentences accordingly. [Citation.] The legislature's discretion in setting criminal penalties is broad, and courts generally decline to overrule legislative determinations in this area unless the challenged penalty is clearly in excess of the general constitutional limitations on this authority. [Citation.]
>
> A proportionality challenge derives from article I, section 11, of the Illinois Constitution of 1970, which 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. A proportionality challenge contends that the penalty in question was not determined according to the seriousness of the offense ***." *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005).

¶ 47 Our supreme court has specifically identified two distinct tests are to be used to evaluate a

proportionality challenge. First, "a penalty violates the proportionate penalties clause if it is cruel, degrading, or so wholly disproportionate to the offense committed as to shock the moral sense of the community." *People v. Moss*, 206 Ill. 2d 503, 522 (2003). Second, "the proportionate penalties clause is violated where offenses with identical elements are given different sentences." *Id.* Our supreme court has abandoned a third method, the "cross-comparison analysis," because it had proven to be "problematic and unworkable." *Sharpe*, 216 Ill.2d at 519. Here, defendant's challenge to his sentence arises under the first test discussed above.

¶ 48 As an initial matter, we note the briefs filed by defendant and the State in this case reflect some fundamental agreements about defendant's 71-year sentence. Specifically, the parties agree defendant's conviction for first degree murder carried a base sentence of "not less than 20 years and not more than 60 years ***." 730 ILCS 5/5-4.5-20(a) (West 2008). However, "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(a)(1)(d)(iii) (West 2008). Acknowledging the jury specifically found defendant personally discharged a firearm, the parties agree defendant's first degree murder conviction carried a minimum sentence of 45 years' imprisonment and a maximum sentence of natural life. Furthermore, defendant does not raise any proportionality challenge to either the base sentencing range for first degree murder or the firearm enhancement on an individual basis. Indeed, as even defendant himself acknowledges, our supreme court has specifically rejected just such a proportionality challenge to the firearm enhancement for first degree murder convictions. *Sharpe*,

216 Ill. 2d at 523-25.

¶ 49 Moreover, the parties agree defendant's attempted first degree murder conviction is treated as a Class X felony, subject to a base sentence of 6 to 30 years' imprisonment. See 720 ILCS 5/8-4(c)(1) (West 2008) ("the sentence for attempt to commit first degree murder is the sentence for a Class X felony"); 730 ILCS 5/5-4.5-25(a) (West 2008) (the sentence of imprisonment for a Class X felony "shall be a determinate sentence of not less than 6 years and not more than 30 years").

¶ 50 Again, however, defendant was subject to an enhanced sentence because "an attempt to commit first degree murder during which the person personally discharged a firearm is a Class X felony for which 20 years shall be added to the term of imprisonment imposed by the court[.]" 720 ILCS 5/8-4(c)(1)(C) (West 2008). Thus, the parties agree defendant's attempted first degree murder conviction was subject to a minimum sentence of 26 years' imprisonment. Defendant also acknowledges our supreme court has held that the imposition of such a firearm enhancement to sentences for attempted first degree murder does not support a successful proportionality challenge, as such an enhancement is "neither cruel nor degrading." *Sharpe,* 216 Ill.2d at 524 (citing *People v. Morgan*, 203 Ill. 2d 470, 488 (2003)).

¶ 51 Finally, there is no dispute defendant's sentences must be served consecutively, as " The court may impose consecutive sentences ***[where] [o]ne of the offenses for which the defendant was convicted was first degree murder ***." 730 ILCS 5/5-8-4(c)(d)(1) (West 2008). The parties, therefore, agree defendant was subject to a total term of imprisonment ranging from 71 years to natural life, and that–assuming the sentences were otherwise constitutional–the trial court's sentence fully complied with the relevant statutory provisions. Not only do the parties agree on this point, but

we concur and similarly find defendant's sentences resulted from the trial court's proper application of the statutory provisions discussed above.

¶ 52 Nevertheless, while defendant, therefore, raises no individual challenges to the statutory provisions involved in his sentencing, he contends that this case involves:

> "The imposition of one 25-year enhancement for first-degree murder and a second 20-year enhancement for attempt murder based upon the simultaneous discharge of a firearm that killed one victim and missed the second. It is the confluence of the statutes creating the [firearm] enhancements and the statute mandating consecutive sentences – adding a minimum of 45 years to Sanchez's sentence–that renders multiple gun-related sentencing enhancements cruel, degrading, and shocking to the moral sense of the community. *** As such, the imposition of multiple firearm sentencing enhancements violates the proportionate penalties clause of the Illinois Constitution."

Defendant, therefore, asks this court to vacate the 20-year firearm-sentencing enhancement to his attempted first degree murder conviction and remand for resentencing.

¶ 53 We disagree with defendant's arguments and, consequently, deny him any sentencing relief. All of defendant's challenges to his sentences are premised upon the assertion that the "confluence" of statues applicable in this case creates a 71-year sentence–what defendant describes as a "*de facto* life sentence"–that was improperly disproportionate to his offenses and therefore cruel and degrading. However, our supreme court has indicated it is "clear that consecutive sentences do not constitute a single sentence and cannot be combined as though they were one sentence for one offense. Each conviction results in a discrete sentence that must be treated individually." *People*

v. Carney, 196 Ill. 2d 518, 530 (2001). Furthermore, "[w]hile, undeniably, a defendant who receives consecutive sentences will serve a longer period of imprisonment than a defendant who receives identical concurrent sentences, *** [consecutive sentencing] determines only the manner in which a defendant will serve his sentences for multiple offenses." *Id.* at 531.

¶ 54 As we have noted above, defendant has not challenged either of his sentences individually and, indeed, pursuant to the authority cited above, it is clear those sentences were proper and constitutional on an individual basis. His challenge is, therefore, limited to a claim that his total 71-year term of imprisonment resulted in an aggregate sentence that violated the proportionate penalties clause. However, "the Illinois constitutional provision requiring that all penalties shall be proportionate to the nature of the offense does not apply to the aggregate of the punishments inflicted for different offenses." *Id.* at 529.

¶ 55 Furthermore, we fail to understand defendant's contention that the total, 71-year term of imprisonment imposed upon his convictions of *both* first degree murder and attempted murder was unconstitutionally disproportionate, when he concedes that an enhanced sentence of up to natural life for a conviction for first degree murder *alone* has been found to satisfy the proportionate penalties clause. See *Sharpe*, 216 Ill. 2d at 523-25. Finally, we see nothing inherently disproportionate about the sentences imposed upon defendant here, considering the facts of the case, the seriousness of those offenses, and the factors in aggravation and mitigation raised at the sentencing hearing.

¶ 56 We therefore reject defendant's contentions on this issue, and affirm his sentences.

¶ 57 III. CONCLUSION

¶ 58 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶ 59 Affirmed.