

FOURTH DIVISION
SEPTEMBER 6, 2012

No. 1-10-2743

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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. 08CR15903 (02)
)	
MELISSA ALMENDAREZ,)	Honorable
)	Rosemary Higgins-Grant,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶1 HELD: defendant's conviction upheld where the identification testimony was sufficient to establish her guilt beyond a reasonable doubt and where she received effective assistance of counsel. Defendant's sentence affirmed where the sentence did not constitute an abuse of discretion.

¶2 Following a jury trial, defendant Melissa Almendarez was convicted of intentional homicide of an unborn child and robbery and was sentenced to 23 years' imprisonment and 7

years' imprisonment, respectively. Defendant appeals her convictions and the sentences imposed thereon, arguing: (1) the State's identification testimony was insufficient to prove her guilty beyond a reasonable doubt; (2) she was denied her constitutional right to effective assistance of trial counsel; and (3) the circuit court erred in considering improper aggravating factors in imposing her sentence. For the reasons explained herein, we affirm the judgment of the circuit court.

¶3 I. BACKGROUND

¶4 On June 7, 2008, Marilu Resendiz, who was 20 weeks pregnant with her third child, was attacked and robbed by a group of four Hispanic women. She delivered a stillborn baby two days after the attack. Defendant, along with Maresa Prado and Patricia Lopez, was subsequently arrested in connection with the attack on Resendiz and was charged with intentional homicide of an unborn child (720 ILCS 5/9-1.2(a)(1), (a)(2) (West 2008)) and robbery (720 ILCS 5/18-1 (West 2008)). Defendant and Prado were tried together by a jury before the Honorable Rosemary Higgins-Grant. Lopez elected to proceed by way of a simultaneous and severed bench trial. This appeal solely concerns defendant.¹

¶5 At trial, Chicago Police Officer Michael Alesia testified that on June 7, 2008, sometime after 5 p.m., he and his partner, Officer Jorge Santos, were dispatched to 3930 West 28th Street

¹ The jury was dismissed several times throughout the lower court proceedings when evidence that was relevant only to Lopez was presented before the trial court. The jury did not hear or consider such evidence. Only the evidence that was presented against defendant will be recounted in this disposition.

to investigate a robbery. When they arrived at that location, Officer Alesia observed that a Chicago Fire Department ambulance had already arrived at the scene and that paramedics were treating the victim, Marilu Resendiz. Officer Alesia approached the ambulance and spoke to Resendiz. He observed bruises and marks "all over" Resendiz's face, and although she was lying on her back on the gurney, he also noted that her abdomen was "swollen" and "extended." He testified that in his opinion, the "pronounced and swollen" nature of Resendiz's abdomen was "not consistent with, anything in [his] opinion, except for a pregnancy." During Officer Alesia's initial conversation with Resendiz, she was "hysterical" and "very visibly distressed, both physically and emotionally," but she was able to provide him with an account of the attack and the persons involved. Specifically, Resendiz told Officer Alesia that four female Hispanics had attacked her, and she identified one of her assailants as Skirts, a girl that she knew who was associated with the area of 28th Street and Tripp. Resendiz kept repeating the nickname Skirts and told Officer Alesia that the four women had jumped into a blue van after they attacked her.

¶6 After the ambulance left the scene to transport Resendiz to St. Anthony Hospital, Officer Alesia and his partner "toured the area" in search of a blue van, but they were unable to find a vehicle that matched the description provided by Resendiz. He and his partner then went to the hospital to speak with Resendiz and her treating physician. After completing their interviews, Officer Alesia generated an incident report and passed the information on to Detective Catherine Rolewicz.

¶7 On cross-examination, Officer Alesia acknowledged that he included a brief, general description of the suspect that Resendiz knew as Skirts in his report. In that report, Skirts was

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simply described as a female Hispanic in her late teens. He did not include any information pertaining to Skirts' height, weight, eye color, hair color, complexion, or distinguishing marks or features. Officer Alesia further acknowledged that he did not include physical descriptions of the other three assailants in the report, and explained that the omission was because Resendiz did not provide him with any physical descriptions of the other women involved in the attack. In addition, Officer Alesia confirmed that Resendiz never provided him with defendant's name or specifically identified her as one of her assailants.

¶8 Detective Catherine Rolewicz, an officer in the Chicago Police Department's Property Crimes Division, confirmed that she was assigned to investigate the June 7, 2008, robbery and attack of Resendiz. After receiving her assignment at approximately 7 p.m. that evening, Detective Rolewicz went to St. Anthony Hospital to start her investigation. When she arrived at the hospital, she conversed with Officers Alesia and Santos before speaking to Resendiz. At that time, Resendiz was lying in a hospital bed. Detective Rolewicz noted that she had a bump and bruises on her face as well as scratches on her arms and knees. Detective Rolewicz also observed that Resendiz's stomach area was "large" and "protruding" and that she appeared to be pregnant. Although Resendiz was upset and "visibly shaken," she was able to converse with Detective Rolewicz and recount her recent attack.

¶9 Resendiz immediately identified Skirts as one of the four offenders. She informed Detective Rolewicz that Skirts was a Hispanic female, who was approximately 18 to 22 years of age. She was approximately 5' 6" tall and weighed about 140 pounds. Resendiz was unable to name the other three offenders, but she did provide Detective Rolewicz with physical

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descriptions for two of the other women involved in the attack. Resendiz described the second offender as a shorter Hispanic female with long curly dark hair. She was approximately 5' 2" tall, weighed somewhere between 150 to 170 pounds, and appeared to be in the same age range as Skirts. Resendiz described the third offender as a Hispanic female with long blonde hair. She was unable to provide any physical description of the fourth female involved in the attack.

Detective Rolewicz did not press her for any additional information at that time, but provided Resendiz with her business card and instructed Resendiz to contact her if she had any additional information. Before Detective Rolewicz left the hospital to prepare her report, she spoke to Doctor Diaz about Resendiz's injuries and pregnancy. A few days later, she learned that Resendiz had lost her baby. At that point, the case was reassigned to Detective Michael Kelly, a homicide detective.

¶10 On cross-examination, Detective Rolewicz acknowledged that Resendiz never named defendant as being one of her assailants. In addition, Detective Rolewicz testified that although the case was reassigned, she had occasion to view the arrest reports that were subsequently completed in the case. One of the reports stated that Maressa Prado was arrested on June 27, 2008. The report revealed that Prado resided at 2840 South Tripp Avenue and was known by the nickname of Skirts. Detective Rolewicz acknowledged that the arrest report described Prado as measuring 5' 4" in height, which was different from the 5' 6" description of Skirts that was initially provided by Resendiz.

¶11 Sergeant Michael Kelly confirmed that he was assigned to investigate the attack on Resendiz in June 2008. At that time, he was a homicide detective in the Chicago Police

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Department. He first met with Resendiz at Stroger Hospital on June 11, 2008. At the time, she was "obviously distraught" and had bruising on her face. After speaking with her, Sergeant Kelly compiled a photo array. He showed the photos to Resendiz later that evening after she had been released from the hospital and had signed the standard line-up advisory form. After viewing the pictures, she "identified Ms. Prado as an individual she knew as Skirts, and one of the people that had punched her in the face and stomach and took her property."

¶12 After Resendiz made the identification, Sergeant Kelly continued his investigation and attempted to locate the other offenders. He and his partner, Detective Daniel Gallagher located and arrested Prado on June 27, 2008. When she was brought into custody, Prado asked to make a phone call to her boyfriend, Renee. Prado provided Sergeant Kelly with the phone number and he dialed the phone for her and remained with her throughout the call. He heard Prado tell her boyfriend that she had been arrested "for that Marilu thing."

¶13 Sergeant Kelly continued his investigation and subsequently met with Resendiz on July 20, 2008, to show her another photo array. She signed another advisory form before viewing the second array. This time, Resendiz identified defendant as another individual involved in her attack. Defendant was brought into custody the following day. Resendiz viewed a physical line-up and positively identified defendant as one of the offenders. On July 22, 2008, Sergeant Kelly had learned that an individual named "Patty" might have also been involved in the attack on Resendiz, and he went to speak with Fred Feliciano, the owner of a gas station located 28th and Pulaski. After conversing with Feliciano, Sergeant Kelly returned briefly to Area 4 before he went back to the gas station to show Feliciano a picture of Patty Lopez. After Feliciano viewed

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Lopez's picture, Sergeant Kelly returned once again to Area 4, where he compiled a third photo array, which he showed to Resendiz. Resendiz identified Lopez from the array. Lopez was brought into police custody the following day. When she was processed, her height was ascertained to be 5'2 and her weight was 160 pounds.

¶14 On cross-examination, Sergeant Kelly stated that when he initially spoke to Resendiz at Stroger Hospital, she described Skirts as having black hair and being 5'6" to 5'9". When Prado was arrested on June 27, 2008, she had "lighter color[ed] hair blonde or light brown" and her height was recorded to be 5'4." Sergeant Kelly also acknowledged that in his preliminary report, Resendiz described one of the other offenders as a Hispanic female with long, blonde hair. She did not describe the offender as having dark brown or black hair with blonde streaks. When Sergeant Kelly compiled the photo array containing a picture of defendant, her hair was not blonde; rather it was "dark."

¶15 Sergeant Daniel Gallagher testified that in the summer of 2008, he was a homicide detective in the Chicago Police Department, and confirmed that he Detective Michael Kelly were assigned to investigate the robbery of Marilu Resendiz and the homicide of her unborn child. On June 27, 2008, at 7:50 p.m., they met with Resendiz at Area 4 headquarters and had her view a line-up. Prior to viewing the line-up, Detective Gallagher had Resendiz sign a "Line-Up/Photo Spread Advisory Form," in which she acknowledged that she understood that the perpetrator might not be included in the line-up and that she was not required to make an identification. After completing the form and viewing the line-up, Resendiz "positively identified Miss Prado as the person who beat and robbed her on the 7th of June." Sergeant

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Gallagher explained that Prado was one of five women included in the line-up. The other four women were also Hispanic females who were approximately the same age and body size as Prado. Resendiz did not hesitate before identifying Prado.

¶16 Sergeant Gallagher and his partner assembled another line-up for Resendiz to view on July 23, 2008. This time, Lopez was included in the lineup in addition to four "non suspects." After signing another line-up advisory form, Resendiz viewed the line-up and positively identified Lopez as being another one of the women who beat and robbed her on June 7th. Resendiz made the identification within "[s]econds" of viewing the line-up.

¶17 Marilu Resendiz testified that in June 2007, she had a physical altercation with co-defendant Prado. At the time, she knew Prado only by her nickname, Skirts. After that incident, Resendiz saw Prado driving and walking around the neighborhood with friends but they did not have any other interaction until June 7, 2008, when Resendiz had another violent encounter with Skirts. On that date, Resendiz was 20 weeks pregnant with her third child, and was "physically showing." Until that day, Resendiz had received regular medical attention for her pregnancy and had not experienced any complications. Because it was raining, Resendiz decided to go to the library located on Pulaski and 27th Street. She walked to the library, carrying her purse and a clear backpack, which contained a laptop and an IPOD. After spending the afternoon reading and looking up baby names, Resendiz left the library sometime before 5 p.m. and decided to walk to a candy store located nearby, on 30th Street and Avers. As she was approaching the intersection, a baby blue van drove through a stop sign. Resendiz did not know who was driving the van, but swore and "flipped [her] finger" at the vehicle. After making her purchase at the

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candy store, Resendiz traveled east on Avers, made a left on 28th Street and headed towards Springfield Avenue. As she was walking, Resendiz was using one headphone to listen to her IPOD. She did not hear anyone approach her, but suddenly felt her hair being pulled. She was then punched in her face. Resendiz fell to the ground and continued to be punched. She put her head down and and her arms around her stomach. She heard several girls yelling at her and telling her to let go of her backpack. Resendiz started screaming that she was pregnant, but heard one of them respond, "You're not pregnant *** you're just a fat bitch." At that point, Resendiz remained hunched over on the ground and did not look at her assailants. Although she heard multiple voices, she did not know how many girls were attacking her. The assailants continued to strike Resendiz on her head, belly, and back and demanded that she let go of her backpack. Resendiz "gave up" and let go of her purse and backpack. She was then able to see the faces of three of her four assailants. She did not see the face of the girl who remained behind her.

¶18 Resendiz testified that the three girls were standing over her and that their faces were "a couple of inches away." She immediately recognized that one of her attackers was Prado, who she knew as Skirts, from their prior altercation one year earlier. She recognized Prado's face as well as the birthmark on her neck. Resendiz had not seen the other two women prior to this date, but she had the opportunity to see their faces during the attack and made in-court identifications of both defendant and Lopez. The women took Resendiz's purse, backpack and IPOD and left her lying on the ground. Resendiz indicated that she did not know specifically, which woman took her property, but stated that her personal items were missing after the attack. Shortly after the women ran away, Resendiz observed a blue van drive by. It was driving the wrong way on a

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one-way street. Resendiz did not specifically see the women enter the blue van and did not have an opportunity to record the license plate number of the vehicle, but she believed it was the same van that she had encountered earlier as she was walking to the candy store.

¶19 After the attack, Resendiz noticed that she was bleeding from between her legs, and screamed for help, but no one came to her assistance. Her cell phone was damaged so she got up, walked to a nearby residence, knocked on the door and asked the resident to call 911, explaining that she was pregnant and bleeding. Resendiz was crying and in pain and sat down on a curb to wait for help. When no one came, she was able to put her cell phone back together and called 911 herself. An ambulance and police car arrived in response to her call. Before she was transported to St. Anthony Hospital, Resendiz spoke to a police officer and immediately identified one of her assailants as Skirts. She was not asked to provide additional descriptions of the other offenders at that time.

¶20 When Resendiz presented at the hospital, she had a bump and scratches on her face, bruises on her legs, and a red mark on her stomach. She received treatment, was provided with pain killers and was released from the hospital the next day. Resendiz, however, returned to the hospital later that same day because she was experiencing stomach pain, vaginal bleeding with blood clots and a frequent urge to urinate. Resendiz received some additional treatment at St. Anthony but was subsequently transported to Stroger Hospital in an ambulance. When she arrived at Stroger Hospital, she was told that her water bag had ruptured and that her baby was not going to survive. Resendiz delivered a stillborn baby girl, who she named Deliah Cabral, on June 9, 2007. While Resendiz was recuperating in the hospital, she spoke to Detectives

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Gallagher and Kelly and informed them about Skirts' involvement in the attack. At that point, Resendiz did not know Skirts' real name.

¶21 After Resendiz was released from the hospital, she spoke to her sister-in-law, Ysenia Mendez on the telephone. During that conversation, Resendiz learned additional information about Skirts. She immediately phoned Detective Gallagher and informed him that Skirts' real name was Maresa Prado. The detectives came to Resendiz's house on June 11, 2008, at approximately 9:30 p.m., and requested her to view a photo array. She was instructed to view the photographs and to circle the pictures of any girls who were involved in the attack. Resendiz identified Prado as one of the offenders.

¶22 Resendiz subsequently met with Detective Kelly on June 27, 2008, at the Area 4 police station. She was shown a five person line-up and again identified Prado. At that time, she did not have any information about the identities of the other offenders. Resendiz subsequently received a phone call on July 19, 2008, from a man named Daniel. After their conversation, Resendiz called her sister-in-law, Ysenia, and together they went to meet with a woman named Shaunte. Shaunte took them to a house in the neighborhood and Resendiz immediately contacted Detective Kelly. On July 20, 2008, Resendiz returned to the police station to view another photo array. After viewing the pictures, she identified defendant as one of her attackers. Detective Kelly showed Resendiz a third photo array on July 22, 2008, and this time, she identified Lopez as one of the women involved in her attack. While she was at the station, Resendiz was also asked to view a line-up, and she once again identified defendant. She viewed another line-up the following day and positively identified Lopez once again. At trial, Resendiz testified that each of

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the co-defendants appeared similarly to the way that they looked on the day of the attack, although defendant's hair was different. Specifically, Resendiz explained that defendant had "streaks of blond hair" on June 7, 2008, whereas she no longer had blond highlights in her hair on the date of trial.

¶23 On cross-examination, Resendiz acknowledged that she had not seen Prado driving around the neighborhood in a blue van. Moreover, before the date of the June 7, 2008, attack, Resendiz had not seen Prado in the company of defendant or Lopez. During the attack, Resendiz was huddled on the ground and acknowledged that she only had a few seconds to view the faces of her attackers. She was distressed and crying. Resendiz admitted that she did not know defendant at the time of the attack, but after speaking to people, she was able to make a positive identification. Although a police report indicated that Resendiz had described one of her assailants as a Hispanic female with long blonde hair, Resendiz clarified that she meant to describe defendant as having blonde highlights, not blonde hair.

¶24 Shaunte Ramirez testified that she knew each of the three co-defendants prior to the attack on Resendiz. She indicated that defendant was her third cousin and that she had known Prado and Lopez for years. Ramirez testified that defendant was friendly with Prado and Lopez and that she had seen the three girls together on several occasions. Ramirez was also friendly with Resendiz because their children were similar in age and would play together at the local park. In addition, Ramirez was "best friend[s]" with Resendiz's sister-in-law, Yesenia. Ramirez testified that in June 2008, defendant was dating Danny Montez and she knew that someone in Montez's family owned a blue van. Prior to the attack on Resendiz, she had seen Montez's

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brother driving the van through the neighborhood. Ramirez acknowledged, however, that she had never seen defendant, Prado or Lopez driving the vehicle.

¶25 Ramirez heard about the attack on Resendez the day after it occurred, and spoke to Yesenia about it. Ramirez subsequently spoke to Resendiz after she was released from the hospital. Based on their conversation and the descriptions that Resendiz gave of her attackers, Ramirez provided Resendiz with the names of defendant and Patty Lopez. Ramirez confirmed that in June 2008, defendant had blonde or light brown "streaks" in her hair. She also confirmed that Prado had a mole or mark on her neck. Ramirez never showed Resendiz pictures of defendant or Lopez. She merely provided Resendiz with their names. On cross-examination, Ramirez acknowledged that she was not close with defendant or defendant's side of the family, but denied that she provided Resendiz with defendant's name to exact revenge on, or cause trouble for, her cousin.

¶26 Doctor Michelle Jordan testified that in 2008, she was employed as an assistant medical examiner in the Cook County Medical Examiner's Office. On June 13, 2008, she received an assignment to conduct an autopsy on Resendiz's female stillborn infant, who had died on June 9, 2008, at 1:52 p.m. Based on the fetal measurements, Doctor Jordan determined that the infant was approximately 20 weeks of gestational age at the time of death. An external examination of the infant revealed a "distinctive red discoloration," confirmation that the baby died in utero. Upon conducting an internal examination of the infant, Doctor Jordan determined that "[e]verything was normal in regards to every single organ system in the body. There was no evidence of a disease process, there was no evidence of malformation of any of the organs." She

concluded that the infant appeared to have been developing normally.

¶27 In addition to conducting a physical examination of the infant, Doctor Jordan also examined the placenta, the "main organ that delivers all of the nutrients as well as blood flow to the fetus." She explained that in the case of stillborn deaths, examination of the placenta is necessary to determine whether the infant's death in utero was caused by a placental abruption, which is a tear that occurs in the placenta that prevents blood flow and nutrients from reaching the developing fetus. Doctor Jordan explained that placental abruption is "fairly rare," but that there are certain risk factors that exist that predispose a woman to experience a placental abruption during pregnancy, including: hypertension, cocaine or methamphetamine abuse, prior history of placental abruption, and maternal trauma.

¶28 Here, upon examining the placenta, Doctor Jordan confirmed the existence of placental abruption when she discovered a blood clot that indented the placental plate. Based upon her examination, Doctor Jordan found that the abruption occupied "approximately 52 percent of the entire surface area of the placenta." She explained that the measurement was significant because "[a]nytime you have placental abruption over 25 percent involvement of the placental plate, it increases stillborn deaths drastically. Anytime you have a placental abruption that occupies approximately 30 percent of the placental plate, it can cause a woman to go into pre-term labor." Based on her examination of the placenta, Doctor Jordan testified that "[t]here was no question that [there] was a placental abruption" in this case. After determining that a placental abruption occurred during Resendiz's pregnancy, Doctor Jordan then sought to determine the cause of the abruption. She noted that Resendiz's medical history was devoid of prior experiences of

placental abruptions during her earlier pregnancies, and upon viewing additional relevant medical records, Doctor Jordan was able to rule out hypertension and drug use as potential causes for the placental abruption in this case. Ultimately, Doctor Jordan determined that the placental abruption that occurred in the instant case was the result of the physical trauma that Resendiz experienced on June 7, 2008. She explained that assault caused the placental abruption, which ultimately deprived the fetus of oxygen and resulted in "an affixial-type [of] death."

¶29 After the State rested its case, defendant elected to testify. She testified that in June 2008, she knew both Maresa Prado and Patricia Lopez. Defendant had known Prado "her whole life" and had been friendly with Lopez for about four years. She denied knowing Resendiz, and explained that the first time she had ever seen Resendiz was in court. Defendant acknowledged that she had a boyfriend named Daniel Montez and that he was the father of her one-year-old son, but denied that Daniel or anyone in his family owned a blue van. Defendant further denied that she was involved in the attack on Resendiz on June 7, 2008. Defendant testified that she was not in the vicinity of 28th and Harding at 5 p.m. that day and was not riding around in a blue van at that time, but she could not recall her precise whereabouts. The first time that defendant heard about the attack on Resendiz was when Maresa Prado was arrested. Defendant was subsequently arrested on July 21, 2008. At that time, defendant had highlights in her dark brown hair. She did not have blonde hair.

¶30 Defendant acknowledged that Shaunte Ramirez was her cousin. Although Ramirez had stated that they did not socialize together, defendant testified that they grew up together and attended family functions together ever since they were young. Defendant identified several

photographs showing her and Ramirez together at family gatherings over the years when they were younger. There were four pictures in all, and were taken when defendant was 1, 8, and 16 years of age. Defendant estimated that the final picture showing defendant and Ramirez together was probably taken in 2000 or 2002.

¶31 On cross-examination, defendant acknowledged that Prado's nickname was Skirts and that she, Prado and Lopez spent time together in the summer of 2008. Defendant further acknowledged that at the time of her arrest, her hair was long and that she had "blonde" highlights. Her hair was much lighter that summer than it was at the time of trial. Although defendant was familiar with the neighborhood and had been on the block of Springfield and Harding during the summer of 2008, she denied that she had ever seen Resendiz in that area and further denied that she was present in that area at the time of Resendiz's attack. Defendant did admit that she talked to Prado about the case and about her testimony before trial.

¶32 Co-defendant Prado also exercised her right to testify. She described herself as 5'4" and 150 pounds. Prado described her natural hair color as "dark brown," but acknowledged that she has dyed her hair blonde in the past; however, she maintained that her hair was dark brown in June 2008. She has a mole on her neck. Prado acknowledged that the photograph used by the police in the photo array that was shown to Resendiz depicted her when she had blonde hair. She explained that the photo had been taken when she was previously arrested for possession of a controlled substance and had dyed her hair.

¶33 Prado acknowledged that in 2007, she had a physical altercation with Resendiz. The fight lasted two to three minutes and occurred on the corner of 28th Street and Tripp. Prado, however,

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denied having any conversations or additional interactions with Resendiz after their initial altercation. At the time that she was arrested for the 2008 attack on Resendiz, Prado was living with her grandmother and daughter at 2040 South Tripp. She was unemployed and was still on probation for her prior narcotics offense. Prado admitted that her nickname was Skirts. She explained that she received the nickname in 2000 when she was 14 years old because she used to belong to a church called Luz Del Mundo and was required to wear long skirts. Prado also acknowledged that she knew both defendant and Lopez. At the time of the attack on Resendiz, Prado had known defendant for four years and had known Lopez for two months. Before June 2008, Prado "associated" with defendant and Lopez around the neighborhood and spent time with them at the local park.

¶34 Prado denied that she had participated in the June 7, 2008, attack on Resendiz, but could not recall where she was at 5 p.m. that evening. She speculated that she was probably spending time with her daughter, but admitted that she was not certain what she was doing at the time. Prado also denied that she had ever been in a blue van. She acknowledged, however, that she heard about the attack on Resendiz from people in the neighborhood and that she had discussed the attack with her boyfriend, Renee Salazar. When Prado called her boyfriend from the police station after her arrest and informed him that she had been arrested "for the Marilu thing," she explained that she was not acknowledging her involvement in the attack, but was simply referring to the attack that she and her boyfriend had previously discussed.

¶35 At the conclusion of defense's case, the parties delivered closing arguments. Following deliberations, the jury returned with a verdict finding defendant and Prado guilty of robbery and

intentional homicide of an unborn child.

¶36 After the jury returned its verdict, the trial court presided over a sentencing hearing. At the sentencing hearing, the trial court, upon hearing the arguments advanced in aggravation and mitigation, sentenced defendant 23 years' imprisonment for intentional homicide of an unborn child and 7 years' imprisonment for robbery. The trial court further ordered the convictions be merged together. Defendant's post-trial and post-sentencing motions were denied. This appeal followed.

¶37 II. ANALYSIS

¶38 A. Sufficiency of the Evidence

¶39 On appeal, defendant first challenges the sufficiency of the evidence. Specifically, she argues that the identification testimony provided by Resendiz "lacked any assurances of reliability" and was insufficient to prove that she was involved in the attack on the victim beyond a reasonable doubt.

¶40 The State responds that defendant's challenge to the sufficiency of the evidence is without merit given that Resendiz positively and credibly identified her as one of the participants in her attack. The State observes that the identification testimony of a single witness is sufficient to sustain a conviction and argues that the jury resolved any doubts in Resendiz's identification testimony against defendant.

¶41 Due process requires proof beyond a reasonable doubt to convict a criminal defendant. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). In reviewing a challenge to the sufficiency of the evidence, it is not a reviewing court's role to retry the defendant; rather, we must view the

evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found each of the essential elements of the crime beyond a reasonable doubt.

People v. Ward, 215 Ill. 2d 317, 322 (2005); *People v. Hayashi*, 386 Ill. App. 3d 113, 122

(2008). The trier of fact is responsible for evaluating the credibility of the witnesses, drawing reasonable inferences from the evidence, and resolving any inconsistencies in the evidence

(*People v. Bannister*, 378 Ill. App. 3d 19, 39 (2007)), and a reviewing court should not substitute its judgment for that of the trier of fact (*People v. Sutherland*, 223 Ill. 2d 187, 242 (2006)).

Ultimately, a reviewing court will not reverse a defendant's conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt. *People v.*

Carodine, 374 Ill. App. 3d 16, 24 (2007).

¶42 The State bears the burden of proving beyond a reasonable doubt the identity of the person who committed a crime. 720 ILCS 5/3-1 (West 2006); *People v. Slim*, 127 Ill. 2d 302, 307 (1989). Vague and doubtful identification testimony is insufficient to sustain a criminal conviction; however, the identification testimony of a single witness is sufficient to sustain a conviction if the witness viewed the accused under circumstances that allowed for a positive identification. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995); *Slim*, 127 Ill. 2d at 307; *People v. Grady*, 398 Ill. App. 3d 332, 341 (2010). Ultimately, the reliability of a witness's identification testimony is a question for the trier of fact. *In re Keith C.*, 378 Ill. App. 3d 252, 258 (2007). In assessing a witness's identification testimony, courts employ the factors set forth by the Supreme Court in *Neil v. Biggers*, 409 U.S. 188, 93 S. Ct. 375, 34 L. Ed. 2d 401 (1972), which include: (1) the opportunity the witness had to view the perpetrator at the time of the offense; (2) the

witness's degree of attention; (3) the accuracy of the witness's prior description of the offender; (4) the certainty of the witness's identification; and (5) the length of time between the offense and the witness's identification. *Lewis*, 165 Ill. 2d at 356; *Slim*, 127 Ill. 2d at 307-08. No one single factor is dispositive; rather, the fact finder should consider all five factors in assessing the reliability of a witness's identification testimony. *People v. Smith*, 2012 IL App (4th) 100901, ¶ 87.

¶43 Here, with respect to the first factor, defendant asserts that Resendiz had "minimal opportunity" to view the women who attacked her given that she was struck from behind and was curled into an "almost fetal position" during the majority of the attack. We acknowledge that Resendiz did testify that she spent much of the attack with her head down and her arms wrapped around her belly; however, she stated unequivocally that she was able to observe the faces of three of her assailants once she released her purse and backpack. Specifically, Resendiz testified that defendant along with Prado and Lopez were standing over her and that their faces were only a "couple inches away" when she looked up at them. Although defendant emphasizes that Resendiz only had seconds to view the offenders, we observe that the mere brevity of a victim's ability to view an offender does not render the witness's subsequent identification so fraught with doubt so as to create reasonable doubt of a defendant's guilt. See, e.g., *People v. Herrett*, 137 Ill. 2d 195, 204 (1990) (finding that the witness had sufficient opportunity to view his assailant where the witness testified that he viewed the offender's face for a "few seconds" in a dimly lit store); *People v. Negron*, 297 Ill. App. 3d 519, 530 (1998) (identification testimony sufficient even though the witnesses "did not have more than several seconds to identify their attackers");

People v. Moore, 264 Ill. App. 3d 901, 911 (1994) (upholding identification where the witness had an opportunity to view the defendant for a "few seconds"). Here, notwithstanding the brevity of the attack, Resendiz's testimony established that she nonetheless had sufficient opportunity to view the faces of three of her assailants, one of whom was defendant.

¶44 Turning to the second factor, Resendiz's degree of attention toward her assailants, defendant emphasizes that Resendiz was "hurt, in distress, crying, and bleeding" during the attack and that her degree of attention was necessarily "compromised." Although the attack was understandably an anxiety-producing experience, we note that the nature of such an encounter does not necessarily decrease a witness's degree of attention or her powers of observation. See, e.g., *People v. Robinson*, 206 Ill. App. 3d 1046, 1052 (1990) ("Excitement, rather than detract from an identification, could increase the powers to observe"). Here, there is nothing to suggest that the attack itself negated the degree of attention that Resendiz paid to defendant and the other assailants when she had the opportunity to view their faces.

¶45 With respect to the accuracy of Resendiz's description of her assailants, defendant argues that none of the descriptions that Resendiz provided to the police officers investigating the attack accurately described defendant. Shortly after the attack, Resendiz provided police with a description of the offender known as Skirts. She described a second offender as a Hispanic female who was 5'2", weighed somewhere between 150-170 pounds and had long curly dark hair. The third offender, whom Resendiz later testified was defendant, was described as a Hispanic female with long blonde hair. She did not provide any additional details pertaining to the height, weight, or any potential distinguishing features of the third woman. At trial, Resendiz testified

that she meant to describe defendant as having blonde highlights, not blonde hair. Later, in response to questioning, defendant acknowledged that she has dyed and highlighted her hair and that her hair was lighter in the summer of 2008 than it was during trial. Her cousin, Shaunte Rameriz, also confirmed that defendant did have blonde or light brown streaks in her hair in June 2008.

¶46 Although we acknowledge the lack of detail and specificity in Resendiz's initial description of defendant, we disagree that the flaws in the description are necessarily fatal to her subsequent identification testimony. Courts have consistently recognized that vague or discrepant descriptions do not necessarily render identifications unreliable because very few witnesses are trained to be keen observers. See, e.g., *People v. Williams*, 118 Ill. 2d 407, 413-14 (1987) (witness' failure to mention the defendant's mustache and facial hair did not render her identification unreliable); *People v. Nims*, 156 Ill. App. 3d 115, 121 (1986) (victim's failure to mention the defendant's facial scars did not render her identification unreliable); see also *People v. Bias*, 131 Ill. App. 3d 98, 104-05 (1985) (recognizing that inaccuracies pertaining to the "presence or absence of a beard, mustache, or tattoo, whether the assailant had missing teeth, and the assailant's height, weight and complexion do not render an identification utterly inadmissible"). Indeed, " '[t]he credibility of an identification does not rest upon the type of facial description or other physical features which the complaining witness is able to relate. *** It depends rather upon whether the witness had a full and adequate opportunity to observe the defendant.' " *People v. Robinson*, 206 Ill. App. 3d 1046, 1051 (1991), quoting *People v. Witherspoon*, 33 Ill. App. 3d 12, 19-20 (1975). Here, we are unable to conclude that Resendiz's

initial description of defendant and her hair color automatically invalidated her subsequent positive identification of defendant.

¶47 The fourth factor pertains to Resendiz's degree of certainty in identifying defendant. Defendant concedes, and we agree, that Resendiz did not display uncertainty in identifying defendant as one of her four assailants. Resendiz positively identified defendant from a photo-array, a physical line-up, and at court. She did not express doubt over her ability to identify her assailants or defendants' involvement in the attack. This factor, thus weighs in favor of the reliability of Resendiz's identification testimony.

¶48 Turning to the fifth and final factor, the length of time between the crime and the identification, we observe that the crime occurred on June 7, 2008, and that Resendiz's identification of defendant took place more than a month after the offense. Specifically, Resendiz identified defendant from a photo array on July 20, 2008, and picked defendant out of a physical line-up on July 22, 2008. Although defendant suggests that the passage of time was too lengthy to permit a reliable positive identification, we are unable to agree; rather, we observe that courts have upheld identifications made after a considerable amount of time passed after the crime. See *People v. Rodgers*, 53 Ill. 2d 207, 214 (1972) (identification made two years after the crime); *People v. Dean*, 156 Ill. App. 3d 344, 352 (1987) (identification made 2 ½ years after the crime). Here, we do not find the passage of time in this case to be too lengthy such that Resendiz's identification is rendered suspect and unreliable.

¶49 Ultimately, we reiterate that the reliability of a witness's identification of a defendant is a matter for the trier of fact (*In re Keith C.*, 378 Ill. App. 3d at 258) and that the testimony of a

single credible witness who makes a positive identification is sufficient to sustain a criminal conviction (*People v. Barnes*, 364 Ill. App. 3d 888, 895 (2006)). After reviewing the relevant factors, we cannot conclude that Resendiz's identification testimony was insufficient to prove defendant's guilt beyond a reasonable doubt; rather, a reasonable jury could have found her testimony sufficient to establish defendant's identity as one of the offenders.

¶50 B. Ineffective Assistance of Counsel

¶51 Defendant next argues that she was denied her constitutional right to effective assistance of counsel as a result of counsel's failure to seek severance of her trial from those of her codefendants. She argues that the evidence against her, namely Resendiz's identification testimony, was "weak at best," in comparison to the evidence against co-defendant Maresa Prado, and contends that as a result of defense counsel's failure to seek severance, the jury "heard a quantum of evidence against [her] codefendants, which enhanced the appearance of reliability and certainty of [Resendiz's] identification of [defendant]."

¶52 The State responds that defense counsel was not ineffective for seeking severance because no legal basis existed that required that defendant and Prado be tried separately. Specifically, the State observes that both defendant and Prado denied their involvement in the attack on Resendiz and that neither woman made a statement that implicated or blamed the other. Because defendant and Prado's defenses were not antagonistic and the evidence against them was "virtually identical," the State argues that defense counsel's decision not to seek severance of defendant's trial did not amount to ineffective assistance.

¶53 Every criminal defendant has a constitutional right to receive effective assistance of

counsel. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I § 8; *Strickland v. Washington*, 466 U.S. 668, 685, 104 S.Ct. 2052, 2063, 80 L. Ed. 2d 674, 691-92 (1984). The right to effective assistance of counsel entails "reasonable, not perfect, representation." *People v. Wilborn*, 2011 IL App (1st) 092802, ¶ 79. To prevail on a claim of ineffective assistance of trial counsel, the defendant must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L.Ed. 2d 674 (1984) and establish that: (1) counsel's performance fell below an objective standard of reasonableness, and (2) counsel's deficient performance prejudiced defendant. *People v. Albanese*, 104 Ill. 2d 504, 525 (1984); *People v. Baines*, 399 Ill. App. 3d 881, 887 (2010). With respect to the first prong, the defendant must overcome the "strong presumption" that counsel's action or inaction was the result of sound trial strategy. *People v. Jackson*, 205 Ill. 2d 257, 259 (2001); *People v. Shelton*, 401 Ill. App. 3d 564, 584 (2010). "In recognition of the variety of factors that go into any determination of trial strategy, * * * claims of ineffective assistance of counsel must be judged on a circumstance-specific basis, viewed not in hindsight, but from the time of counsel's conduct, and with great deference accorded counsel's decisions on review." *Wilborn*, 2011 IL App. (1st) 092802, ¶ 79, quoting *People v. Fuller*, 205 Ill. 2d 308, 330-31 (2002). To satisfy the second prong, the defendant must establish that but for counsel's unprofessional errors, there is a reasonable probability that the trial court proceeding would have been different. *People v. Peebles*, 205 Ill. 2d 480, 513 (2002). A reasonable probability that the trial result would have differed is "a probability sufficient to undermine confidence in the outcome-or put another way, that counsel's deficient performance rendered the result of the trial unreliable or fundamentally unfair." *People v. Evans*, 209 Ill. 2d 194, 220

(2004). A defendant must satisfy both the performance and prejudice prongs of the *Strickland* test to prevail on an ineffective assistance of counsel claim. *Evans*, 209 Ill. 2d at 220; *People v. McCarter*, 385 Ill. App. 3d 919, 935 (2008).

¶54 There is no automatic right of a criminal defendant to be tried separately from her co-defendant; rather, the general rule in Illinois is that defendants who are indicted together are to be jointly tried unless fairness necessitates that separate trials be conducted to avoid prejudice. *People v. Byron*, 116 Ill. 2d 81, 92 (1987); *People v. Gabriel*, 398 Ill. App. 3d 332, 346 (2010); *People v. Bock*, 242 Ill. App. 3d 1056, 1079 (1993). Severance to avoid prejudice is appropriate in two circumstances: (1) when the defenses of the jointly indicted defendants are so antagonistic that neither can receive a fair trial if they are tried together; or (2) where hearsay admissions of one defendant implicate the codefendant seeking severance. *Gabriel*, 398 Ill. App. 3d at 346-47; *Bock*, 242 Ill. App. 3d at 1079. Generally, the decision whether or not to seek severance is regarded as a matter of trial strategy (*People v. Poole*, 2012 IL App (4th) 101017, ¶ 10), and an attorney is not ineffective for failing to seek severance where the motion, if presented, would have been unsuccessful (*Bock*, 242 Ill. App. 3d at 1080; see also *Gabriel*, 398 Ill. App. 3d at 347).

¶55 Here, the record reflects that Lopez's bench trial was severed from the joint jury trial of defendant and Prado. The reason for the severance is not apparent in the record. Before trial commenced, counsel for both defendant and Prado confirmed to the trial court that there was no "severance issue" with respect to defendant and Prado and that defendant and Prado had elected to be tried jointly before a jury. Because Lopez's bench trial was conducted simultaneously with

defendant and Prado's jury trial, the jury heard testimony regarding Resendiz's identification of each of the three women, but were dismissed multiple times throughout the lower court proceedings when the court was presented with evidence that solely pertained to Lopez.

Although defendant now argues that counsel's decision not to seek severance was erroneous, based on our review of the record, we are unable to conclude that defense counsel's representation was ineffective.

¶56 First, it is clear that defendant and Prado did not have antagonistic defenses. Rather, both women presented the same defense of misidentification and argued that they were not party to the attack on Resendiz. Although neither woman could remember what she was doing at the time of the attack, both denied their involvement. Second, neither woman made an inculpatory statement or tried to blame the other for Resendiz's attack. Accordingly, neither of the legal bases warranting severance existed in the case at bar.

¶57 Nevertheless, defendant, citing our supreme court's decision in *People v. Byron*, 116 Ill. 2d 81 (1987), argues that defense counsel was ineffective for seeking severance because the amount of evidence against Prado far exceeded the evidence against defendant. In *Byron*, the court recognized that severance may be warranted in circumstances where there is a qualitative difference in the amount and type of evidence against two codefendants, explaining: " 'In such cases when there is a gross disparity in the quantity and venality of the testimony against the respective joint defendants it is fair to inquire whether the jury can reasonably be expected to compartmentalize the evidence as it relates to defendants in the light of its volume and limited admissibility.' " *Byron*, 116 Ill. 2d at 93, quoting *United States v. Sampol*, 636 F. 2d 621, 647

(D.C. Cir. 1980).

¶58 Although we acknowledge the principle set forth in *Byron*, we disagree with its applicability in the case at bar because, contrary to defendant's claim, the evidence against the co-defendants was not grossly disparate. There was no physical evidence tying defendant or Prado to the Resendiz's attack. No DNA evidence was found and none of the items taken from Resendiz were recovered from defendant or Prado. Rather, the crux of the State's case against defendant and Prado was Resendiz's identification testimony. Resendiz testified that she identified defendant, Prado and Lopez as her assailants after viewing photo arrays and physical line-ups. She also identified each of the women at trial. Thus, contrary to defendant's claim, the evidence presented to the jury against defendant and Prado was remarkably similar. The only real difference in the evidence against defendant and Prado was the fact that Resendiz had a single prior encounter with Prado before the June 7, 2008, attack, but had never seen defendant or Lopez before that date. We do not agree that testimony pertaining to Resendiz's single prior encounter with Prado resulted in a "gross disparity in the quantity" of the evidence between defendant and Prado such that the jurors could not reasonably be expected to compartmentalize the evidence as it related to the separate co-defendants.

¶59 Although defendant complains that the jury was potentially swayed by hearing about Resendiz's positive identifications of both Lopez and Prado, we note that given the relevance of identification testimony and the fact that the charges were brought pursuant to an accountability theory, Resendiz's identification testimony was both relevant and admissible against defendant, Prado and Lewis. See, e.g., *People v. Lewis*, 243 Ill. App. 3d 618, 625 (1993) (rejecting the

defendant's argument that there was a gross disparity in the evidence against him and his co-defendants where the majority of the evidence presented at trial was relevant and admissible against each of the three co-defendants). Indeed, a defendant is not prejudiced merely because it hears the manner in which her co-defendants were identified and arrested. See, e.g., *People v. Dixon*, 133 Ill. App. 3d 1073, 1083 (1985). Moreover, we note that apart from Resendiz's identification testimony, there was additional evidence of defendant's involvement in the crime, including the fact that defendant was dating Danny Montez, whose younger brother was seen driving a blue van that matched the description of the vehicle seen by Resendiz before and after the attack. Ultimately, because defendant cannot show that she was entitled to severance, she cannot establish that trial counsel was ineffective for failing a motion to sever her trial from that of Prado's. *Gabriel*, 398 Ill. App. at 347; *Bock*, 242 Ill. App. 3d at 1080. We thus reject her ineffective assistance of counsel claim.

¶60 C. Sentencing

¶61 Finally, defendant argues that she did not receive a fair sentencing hearing because the judge relied on improper aggravating factors in determining her sentence. Specifically, defendant contends that her sentence was imposed based upon the court's unsubstantiated and mistaken belief that the crime against Resendiz was gang-related as well as in response to the fact that defendant maintained her innocence of the crime during the sentencing hearing. Based upon the court's reliance on these improper aggravating factors, defendant requests that the matter be remanded for a new sentencing hearing.

¶62 The State responds that the trial court only considered proper aggravating and mitigating

factors in imposing defendant's sentence, and thus, defendant is not entitled to a new sentencing hearing.

¶63 Initially, we acknowledge that defendant failed to preserve this issue for appeal by failing to raise it properly in the trial court. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (recognizing that to properly preserve an issue for appeal, a defendant must object to the purported error at trial and specify the error in a posttrial motion and that her failure to satisfy both requirements results in forfeiture of appellate review of her claim). Defendant acknowledges her failure to properly preserve this argument but urges this court to consider her claim under the second-prong of plain error, arguing that the right to be lawfully sentenced impacts a prisoner's fundamental right to liberty. See Ill. S. Ct. R. 615(a); *People v. Ritchley*, 286 Ill. App. 3d 848, 852 (1997). We acknowledge that the "the plain error rule may be invoked if the evidence at a sentencing hearing was closely balanced or if the error was so egregious as to deprive the defendant of a fair sentencing hearing." *People v. Baker*, 341 Ill. App. 3d 1083, 1090 (2003). In addition, we observe that forfeiture is less rigidly applied when the basis for a defendant's claim pertains to the trial judge's conduct. *People v. Zapata*, 347 Ill. App. 3d 956, 964 (2004). Accordingly, we will address the merit of defendant's claim.

¶64 The Illinois Constitution requires a trial court to impose a sentence that achieves a balance between the seriousness of the offense and the defendant's rehabilitative potential. Ill. Const. 1970, art. I, §11; *People v. Lee*, 379 Ill. App. 3d 533, 539 (2008). To find the proper balance, the trial court must consider appropriate aggravating and mitigating factors, which include: "the nature and circumstances of the crime, the defendant's conduct in the commission

of the crime, and the defendant's personal history, including his age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment and education." *People v. Maldonado*, 240 Ill. App. 3d 470, 485-86 (1992). Because the trial court is in the best position to weigh these factors, the sentence that the trial court imposes is entitled to great deference and will not be reversed absent an abuse of discretion. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000); *Lee*, 379 Ill. App. 3d at 539. Moreover, because the ordinary rules of evidence are relaxed at sentencing, a court " 'may search anywhere within reasonable bounds, for other facts which tend to aggravate or mitigate the offense.' " *People v. Sims*, 403 Ill. App. 3d 9, 23 (2010), quoting *People v. La Pointe*, 88 Ill. 2d 482, 495 (1981). Ultimately, a reviewing court may not reweigh aggravating and mitigating factors in reviewing a defendant's challenge to her sentence, and it may not substitute its judgment for the trial court merely because it could or would have weighed the factors differently. *People v. Jones*, 376 Ill. App. 3d 372, 394 (2007).

¶65 Where, however, the sentencing judge relies on improper factors and speculation in imposing a defendant's sentence, the sentence should be vacated and the cause remanded for resentencing. *Zapata*, 347 Ill. App. 3d at 964. Generally, it is proper for a court to consider a defendant's lack of remorse in imposing a sentence, but it may not rely on a defendant's failure to admit to guilt in deciding to impose a harsher sentence. *People v. Speed*, 129 Ill. App. 3d 348, 349-50 (1984); *People v. Byrd*, 139 Ill. App. 3d 859, 859 (1986). In addition, although a court may take notice of a defendant's gang involvement or affiliation as it is relevant to a defendant's general moral character, (*Sims*, 403 Ill. App. 3d at 23), it may not heavily rely on that factor in imposing a sentence where there is no evidence that the crime itself was related to the defendant's

gang involvement. See, e.g., *Zapata*, 347 Ill. App. 3d at (reversing cause for resentencing where the court, in imposing the sentence, indicated it believed that the shooting was gang-related even though there was no evidence to support that finding); *People v. Gonzalez*, 238 Ill. App. 3d 303, 333 (1992) (finding that the trial court failed to consider the proper requisite statutory factors in imposing the defendant's sentence where it characterized a shooting as "mindless street gang conflict" where there was no evidence the shooting was gang-related).

¶66 Here, at the outset of the sentencing hearing, the court was presented with the results of a Clear System search, which identified defendant as a member of the Latin King street gang. Defendant, through her attorney, disputed the notation of gang involvement included in the search results, and argued that she had never been affiliated with a gang. In response, the court stated: "Well, the Clear System search indicating previous instances there was an indication she is a member of the Latin Kings street gang will remain, but I will take into consideration your representations to the Court that Ms. Almendarez has not been a gang member."

¶67 Thereafter, the court heard evidence in aggravation and mitigation. Defendant and her mother were both provided with an opportunity to address the court. In her statement to the court, defendant stated, in pertinent part: "Although I feel horrible and truly sorry for what [Resendiz] went through, I'm not the source of her pain. Despite the jury's decision, I want to remind you I'm innocent of the charges." After defendant's statement, the State addressed the court as follows: "I would just ask the Court *** to take note of the colors of her shoes when she denied the Latin King involvement. As this Court is aware, the Latin King colors are the colors of her shoes. *** They are gold, black, with white on them."

¶68 Ultimately, after hearing the arguments of the parties, the court sentenced defendant to 23 years' imprisonment for intentional homicide of an unborn child and imposed a 7 year sentence for robbery, before merging the convictions. In explaining its sentencing decision, the court stated, in pertinent part,:

"I have to say Ms. Almendarez did present some remorse during the course of her statement, she still took no responsibility for her acts in the verdict of the Court—rather, verdict of the jury, and the judgment of the Court that was entered. She does at least acknowledge the loss that Ms. Risendez [*sic*] suffered and how serious that loss was. She is sorry for the loss of her own motherhood and for the loss of her baby's mother, but that is—while it is regrettable, it doesn't do anything to demonstrate to this Court true remorse for the acts she committed.

Ms. Almendarez is wearing the colors of a Latin King. The indication is that she is a member of Latin King. I do personally see based on testimony that was given before this Court that there was gang involvement here and that there was an intention to establish the superiority of Ms. Almendarez and Ms. Prado, and the inferiority of Ms. Risendez [*sic*], and the beating was intentional and it caused the death of the unborn child of Ms. Risendez. [*sic*] It is serious, and I agree with the State that it deserves a statement."

¶69 Here, we do not find that the court improperly implicitly or explicitly imposed a harsher sentence based on defendant's continued claim of her innocence; rather, the court's statements when read as a whole indicate that the court focused on defendant's lack of remorse when imposing her sentence. Because a defendant's lack of remorse is an appropriate factor to

consider, we find that the court did not err in making note of this factor in sentencing defendant. See, e.g., *People v. Morando*, 169 Ill. App. 3d 716, 728 (1988). However, we do find that there is nothing in the record to substantiate the court's finding that the attack on Resendiz was gang-related. Although there was some evidence to support the court's conclusion that defendant was a gang member, there was nothing to establish the relevance of this fact in relation to the attack on Resendiz. Thus, the court's consideration of this evidence in aggravation was improper; however, remand for resentencing is not necessary unless this was a "dominant" factor in the court's sentencing of defendant. *Sims*, 403 Ill. App. 3d at 24; *Zapata*, 347 Ill. App. 3d at 966. Here, we do not find defendant's gang affiliation was a "dominant" factor in the sentence imposed by the trial court. We note that a reviewing court should not focus on a few words or statements made by the trial court, but must consider the record as a whole when reviewing the propriety of a sentence. *Sims*, 403 Ill. App. 3d at 24. In this case, the court's comment was made during the its comprehensive recitation of the multitude of aggravating and mitigating factors against defendant including her lack of criminal background and the letters submitted on her behalf. Because we find that the court's consideration of defendant's gang-involvement and its relevance to the attack on Resendiz was not a dominant factor in the court's sentencing decision, we affirm the sentence imposed by the trial court. See *Sims*, 403 Ill. App. 3d at 24.

¶70 III. CONCLUSION

¶71 Accordingly, for the aforementioned reasons, we affirm the judgment of the circuit court.

¶72 Affirmed.