SIXTH DIVISION
March 29, 2013

No. 1-10-3006

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court
Plaintiff-Appellee,	)	of Cook County
	)	
v.	)	No. 07 CR 9982
	)	
TERREL JENKINS,	)	Honorable
	)	Neera Walsh,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Lampkin and Justice Hall concurred in the judgment.

ORDER

¶ 1 Held: The evidence was sufficient to prove defendant guilty of first degree murder beyond a reasonable doubt. The trial judge did not err in admitting prior inconsistent oral statements, written statements and grand jury testimony of witnesses who recanted these statements at trial. The automatic transfer provision of the Juvenile Court Act of 1987 is constitutional. Defendant's 50-year sentence is not excessive.

¶ 2 Following a jury trial in the circuit court of Cook County, defendant Terrel Jenkins was found guilty of first degree murder, with the jury also finding defendant personally discharged a firearm that proximately caused the death of Lloyd Ware. The trial court, after considering aggravating and mitigating factors, sentenced defendant to 50 years in the Illinois Department of

Corrections. On appeal, defendant argues: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) the trial judge erred in admitting the prior inconsistent oral statements, written statements and grand jury testimony of witnesses who recanted these statements at trial; (3) the automatic transfer provision of the Juvenile Court Act of 1987 (Juvenile Court Act) (automatic transfer provision) (705 ILCS 405/5-130 (West 2006)) is unconstitutional; and (4) his 50-year sentence is excessive. For the following reasons, we reject defendant's arguments and affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 The record on appeal discloses the following facts. Defendant was born on July 27, 1987. On May 9, 2007, defendant was indicted on six counts of first degree murder for the September 15, 2002, shooting death of Lloyd Ware (Ware).[1] Although defendant was 15 years old at the time of the murder, he was prosecuted as an adult pursuant to the automatic transfer provision (705 ILCS 405/5-130(1)(a) (West 2006)), which provides in part that 15-and 16-year-old defendants charged with first degree murder are to be prosecuted under the Criminal Code of 1961 (720 ILCS 5/1-1 to 47-25 (West 2006)).

¶ 5 Defendant's trial commenced on June 7, 2010. Ware's mother, Fannie Mae Ware, testified she last saw Ware alive the week before September 15, 2002. She learned on September 15, 2002, Ware had been shot and then traveled to Chicago, Illinois, from Toledo, Ohio. She

[1] In a pretrial motion, the State asserts an arrest warrant issued for defendant on February 27, 2003, but defendant was not arrested until April 10, 2007.

next saw Ware at the medical examiner's office when she identified his dead body.

¶ 6 Theodore Triplett testified that in 2002, his nickname was "Theory" and he was a member of the Conservative Vice Lords street gang. At that time, Triplett lived at the corner of Springfield Avenue and Monroe Street in Chicago. Triplett knew defendant, Ware (a/k/a "Onther"), Daniel Born (a/k/a "Shaky Sean"), Lawrence Cox (a/k/a "LC") and Roshawn Dillard (a/k/a "Boogaloo") from the neighborhood.

¶ 7 According to Triplett, a block away from the corner of Springfield and Monroe, drugs were sold at a "drug spot" on the corner of Hamlin Boulevard and Wilcox Street. This drug spot was controlled by the rival Four Corner Hustlers street gang. Ware was affiliated with the Four Corner Hustlers. Born was a member of the Four Corner Hustlers, but Triplett did not recall whether Born ran the drug spot at Hamlin and Wilcox. Triplett also failed to recall whether there was a problem between Dillard and the Four Corner Hustlers in September 2002, but Dillard was a Traveling Vice Lord and was not allowed to sell drugs in Four Corner Hustlers territory.

¶ 8 On September 15, 2002, Triplett saw Born, Cox, Dillard and defendant at a block party. Triplett also spoke to Ware about basketball at the party. Later, Triplett saw Ware walking to his automobile, which was facing southward on Springfield Avenue. A woman and her baby were already inside the vehicle. Ware entered the automobile and proceeded onto Monroe Street.

¶ 9 According to Triplett, someone wearing a hoodie came from the direction of Springfield Avenue and ran across the street to Ware's automobile. Triplett saw the man pull a semi-auomatic pistol from his waistband and point it at Ware. Triplett heard a shot.

¶ 10 Triplett further testified at trial he could not identify the shooter because he was wearing a

hood over his head. Immediately after the shooting, Triplett spoke with police and did not identify the shooter.

¶ 11 Triplett testified that on October 13, 2002, following his arrest on an unrelated drug charge, he spoke to the police again about the shooting. Triplett told a detective that Dillard shot at and robbed the drug spot at Hamlin and Wilcox over a debt owed by Born's brother, who allegedly operated the drug spot. Triplett also told the detective defendant shot Ware as he was getting into his automobile.

¶ 12 Triplett acknowledged he gave a handwritten statement to the police and assistant State's Attorney (ASA) John McNulty on February 20, 2003, about the shooting, again identifying defendant as the shooter, wearing a black hoodie. In this statement, Triplett added that when he saw Ware walking to his car, he also saw defendant, Chastity Carwell, and Cox (whom he identified as a Four Corner Hustler) on the southwest corner of Springfield and Monroe. Triplett further told the police he saw defendant and Cox run down Springfield toward Wilcox after the shooting. Triplett testified the police promised him nothing in return for the statement.

¶ 13 Triplett further testified he appeared before a grand jury on February 21, 2003. Triplett acknowledged he testified to the grand jury about the dispute involving the drug spot, adding that Dillard used Ware's automobile to rob the drug spot. Triplett also testified to the grand jury that defendant, wearing a black hoodie, black sweat pants and black skull cap, fired a shot at Ware and ran southward.

¶ 14 On cross-examination, Triplett testified he never saw the shooter and never willingly spoke with the police. On redirect examination, Triplett admitted he signed the handwritten

statement freely and voluntarily. Triplett also admitted he testified to the grand jury that he was treated "very good" by the police and no threats or promises were made to him to obtain his statement.

¶ 15 ASAs McNulty and Lori Rosen identified Triplett's handwritten statement and grand jury transcript. ASA McNulty testified Triplett seemed calm and conversational when he gave the handwritten statement, and said the police treated him well and his statement was given voluntarily. According to ASA McNulty, Triplett never said he could not identify the shooter. A redacted version of Triplett's statement was published to the jury, in which Triplett stated he was "scared," but was giving his statement freely and voluntarily. ASA Rosen testified that regarding the grand jury testimony, Triplett never indicated he had been threatened or told to identify defendant. ASA Rosen acknowledged police were in the next room during Triplett's grand jury testimony. Triplett's redacted statement and grand jury transcript ultimately were sent back with the jury.

¶ 16 Chicago Police Detective Gary Bush testified he interviewed Triplett said on October 13, 2003. Triplett told Detective Bush he was afraid for his life and had been untruthful after the shooting, but now wanted to cooperate. Detective Bush added that Triplett identified defendant as the shooter from a photograph.

¶ 17 Carwell testified she saw Triplett, Born, Cox, Dillard and Ware at the block party. Carwell also testified she did not see the shooter. Carwell acknowledged she previously identified defendant as the shooter from a police photo array, but testified she did so because police told her he was the shooter and she wanted to go home. Carwell also acknowledged

giving a handwritten statement about the shooting on December 13, 2002, but denied making most of the statements in the document. Carwell further acknowledged testifying before the grand jury on December 13, 2002, but testified she could not recall her grand jury testimony.

¶ 18 The parties stipulated that ASA Michelle Wilson would testify she spoke to Carwell, who agreed to give a handwritten statement regarding the shooting. In the handwritten statement, Carwell indicated she saw defendant cross from the southwest to the northeast corner of Springfield and Monroe with a gun in his hand. Carwell also stated she saw defendant point the gun at Ware's automobile, then heard a gunshot and saw a flash from the gun. Carwell then saw defendant run toward Wilcox as Ware's automobile collided with a parked automobile on Monroe. Detective Bush testified Carwell never indicated she identified defendant as the shooter in order to leave the police station during the December 13, 2002, interview.

¶ 19 The parties also stipulated that ASA William Kelly also had a conversation with Carwell about the shooting and presented her testimony to the grand jury. Carwell testified to the grand jury that defendant crossed the street with a gun and fired it in the direction of Ware's automobile. Carwell also testified to the grand jury that she reviewed her handwritten statement and no threats or promises were made to obtain that statement. Carwell further testified to the grand jury no threats or promises were made to induce her to testify to the grand jury.

¶ 20 Kajuan Robinson testified he was 12 years old at the time of the shooting. Robinson also testified he was riding his bicycle at the time of the shooting and did not see the shooter.

¶ 21 Robinson acknowledged that he spoke to the police about the shooting in March 2007, when police came to the prison where he was incarcerated to discuss another case. Robinson

also identified defendant as the shooter from a police photo array in April 2007. Robinson testified, however, that the police told him what to say and promised money and early release from prison if he signed the photo array.

¶ 22 Robinson admitted he testified before the grand jury that he saw defendant shoot Ware with a gun, and Ware's automobile then collided with another vehicle. Robinson claimed the police told him what to say to the grand jury, even though he told the police he did not see the shooter. Robinson acknowledged he testified to the grand jury he had not come forward sooner because he was young and the police had not asked him about the shooting. Robinson also admitted he testified to the grand jury no one made threats or promises to him to induce his grand jury testimony.

¶ 23 Sakena Barnett, the passenger in Ware's automobile at the time of the shooting, testified she ducked when she heard a gunshot and did not see the shooter. Barnett's testimony was substantially similar to her statement to the police on the night of the shooting.

¶ 24 Demetrius McGrone testified he overheard defendant say at the block party that he was tired of being bullied and robbed by Dillard and was "going to put an end to it." McGrone also testified defendant then walked away, putting on a black hoodie. McGrone saw defendant grab the front of the hoodie "like he was looking for something that was supposed to be there." According to McGrone, the front pouch of the hoodie was hanging low, as though a weight was holding it down. McGrone testified he heard two gunshots about five minutes later, but did not see the shooter. McGrone acknowledged he identified defendant in a police photo array as the man who said the words he heard at the block party.

¶ 25 Kimberly French testified she attended the block party and heard the gunshots. She turned around to see an automobile across from her and a man wearing a black hoodie standing by the vehicle. French saw the man run down Springfield around a van. After the man came around the van, he stood three or four inches from French, who saw his face. French heard someone across the street say, "Man, come on, you did what you had to do. Let's go." She then saw that the man next to her held a gun in his hand, which he put in the front pocket of his hoodie.

¶ 26 French also testified that on February 26, 2003, she identified the shooter from a police photo array. Detective Bush testified French identified defendant as the shooter at that time. Alicia Stewart, a defense investigator, testified that on March 17, 2008, French identified Born as the shooter from a photo array. French testified she was not wearing her eyeglasses during this identification. At trial, French identified courtroom spectator Joshua Cox as the shooter. Joshua Cox testified he was defendant's "brother's bother," but he did not attend the block party or shoot Ware.

¶ 27 The parties stipulated to the testimony of Dr. Thamrong Chira, who was employed by the Cook County medical examiner's office in 2002. Dr. Chira performed an autopsy on Ware finding one gunshot to Ware's chest, and recovering a medium-caliber bullet from this wound. Dr. Chira also found a graze wound to Ware's left shoulder. Dr. Chira would testify that Ware's cause of death was multiple gunshot wonds and the manner of death was homicide.

¶ 28 William Moore, a forensic investigator for the Chicago Police Department, testified he processed the crime scene at 3930 West Monroe on September 15, 2002. After speaking with

detectives at the scene, Moore proceeded to 55 South Springfield, at the intersection of Springfield and Monroe. At that location, Moore recovered a fired 9 mm cartridge case. The parties stipulated the cartridge case bore no suitable latent fingerprint impressions and no definite conclusion could be reached regarding whether the cartridge case had ever been part of the fired bullet recovered by the medical examiner.

¶ 29 Following closing arguments and jury instructions, the jury deliberated and found defendant guilty of first degree murder. The jury also found the State proved defendant personally discharged a firearm that proximately caused Ware's death.

¶ 30 On August 12, 2010, defendant filed a posttrial motion for new trial. On August 13, 2010, following argument on the matter, the trial court denied defendant's posttrial motion and proceeded to a sentencing hearing. After hearing evidence in aggravation and mitigation, the trial judge sentenced defendant to 50 years in the Illinois Department of Corrections. On September 10, 2010, defendant filed a motion to reconsider his sentence. On October 1, 2010, the trial judge denied the motion to reconsider and defendant filed a timely notice of appeal to this court.

¶ 31 DISCUSSION

¶ 32 On appeal, defendant argues: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) the trial judge erred in admitting the prior inconsistent oral statements, written statements and grand jury testimony of witnesses who recanted these statements at trial; (3) the automatic transfer provision of the Juvenile Court Act (705 ILCS 405/5-130 (West 2006)) is unconstitutional; and (4) his 50-year sentence is excessive. We address defendant's arguments in

turn.

¶ 33 Sufficiency of the Evidence

¶ 34 Defendant initially claims the evidence presented at trial was insufficient to convict him of first degree murder. When a defendant challenges the sufficiency of the evidence, it is not the function of the reviewing court to "retry" the defendant (*People v. Wheeler*, 226 Ill. 2d 92, 114 (2007)) or "to substitute its judgment for that of the fact finder" (*People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009)). It is the responsibility of the fact finder, not the reviewing court, to determine the credibility of witnesses, to resolve any conflicts in the evidence and to draw reasonable inferences from the evidence. *Id*. A reviewing court must determine whether, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Evans*, 209 Ill. 2d 194, 209 (2004). The court "will not reverse a conviction unless the evidence is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt." *Id*.

¶ 35 A person commits first degree murder when he kills a person without lawful justification and, in performing the acts which cause the death, 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 2002).

¶ 36 Defendant argues his conviction cannot withstand review because no witnesses identified him as the shooter at trial and the State's case was based almost entirely on the substantive introduction of witnesses' prior inconsistent statements. Where the evidence includes testimony

that normally would be barred as hearsay, such evidence is properly admitted if it meets the criteria in section 115-10.1 of the Code of Criminal Procedure of 1963 (Code):

"(a) the statement is inconsistent with [the witness'] testimony at the hearing or trial, and

(b) the witness is subject to cross-examination concerning the statement, and

(c) the statement –

(1) was made under oath at a trial, hearing, or other proceeding, or

(2) narrates, describes, or explains an event or condition of which the witness had personal knowledge, and

(A) the statement is proved to have been written or signed by the witness, or

(B) the witness acknowledged under oath the making of the statement either in his testimony at the hearing or trial in which the admission into evidence of the prior statement is being sought, or at a trial, hearing, or other proceeding[.]" 725 ILCS 5/115-10.1 (West 2002).

"[T]he policy reasons underlying section 115-10.1 of the Code as an exception to the hearsay rule include the fact that 'substantive admissibility [of the hearsay] will protect parties from turncoat witnesses.' " *People v. Fauber*, 266 Ill. App. 3d 381, 390 (1994) (quoting Steigmann, Prior Inconsistent Statements as Substantive Evidence in Illinois, 72 Ill. B.J. 638 (1984).)

¶ 37 A trier of fact may consider a prior inconsistent statement introduced as substantive evidence pursuant to section 115-10.1 to be the same as direct testimony from that witness and is free to weigh such statements based upon the same factors used when assessing direct testimony.

People v. McCarter, 2011 IL App (1st) 092864, ¶ 23. Moreover, in determining whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt, this court has held that there are no "suspect categories" of properly admitted evidence that require a different standard of appellate review. *People v. Curtis*, 296 Ill. App. 3d 991, 999 (1998). Thus, the weight of authority in Illinois holds that recanted prior inconsistent statements can be sufficient to support a conviction, even without corroborating evidence. See *People v. Thomas*, 354 Ill. App. 3d 868, 878-79 (2004) (and cases collected therein).

¶ 38 Defendant primarily relies on three cases to support his argument: *People v. Arcos*, 282 Ill. App. 3d 870, 875-76 (1996); *People v. Reyes*, 265 Ill. App. 3d 985 (1993); and *People v. Parker*, 234 Ill. App. 3d 273, 280 (1992). In *Arcos*, this court reversed a conviction based on section 115-10.1 statements from a witness whom the trial court, in a bench trial, found was a " 'thoroughly disreputable person who cannot be believed ***.' " See *Arcos*, 282 Ill. App. 3d at 871. Despite the fact that the trial court found the witness's statement incriminating the defendant to be true, this court still reversed because the trial court gave the witness "absolutely no credibility" (*Id*. at 874), and because it found the corroborative evidence the trial court identified as bolstering the prior inconsistent testimony was lacking. *Id*. at 876.

¶ 39 In *Reyes*, this court held the State had not proven Reyes guilty beyond a reasonable doubt of attempted murder, where the only evidence to contradict Reyes' assertion that he had not participated in the group beating was two witnesses' grand jury statements. *Reyes*, 265 Ill. App. 3d at 989. This court deemed the credibility of those statements to be highly suspect because: (1) both witnesses recanted during Reyes' trial; (2) both statements consisted merely of "yes" and

"no" answers to leading questions from the State; and (3) one of the witnesses testified, without contradiction, that the police had coerced her into identifying the defendant. Because the disavowed and highly suspect grand jury statements were the sole evidence of Reyes' guilt, the court held that the State failed to prove Reyes guilty beyond a reasonable doubt. *Id*. at 990.

¶ 40 Similarly, in *Parker*, the State's three eyewitnesses testified at Parker's trial that Parker had not participated in the crime. Pursuant to section 115-10.1 of the Code, the State then introduced the three witnesses' prior inconsistent statements in which they stated that Parker had participated in the crime. The jury convicted Parker, and he appealed. *Parker*, 234 Ill. App. 3d at 274-79. On appeal, this court reversed Parker's conviction on the ground that the State had failed to prove him guilty beyond a reasonable doubt. The *Parker* court explained that the credibility of the prior inconsistent statements was severely undermined by the three witnesses' trial testimony, which exculpated defendant and cast doubt on those statements' authenticity. *Id*. at 280-81. Specifically, the first witness, who gave his prior statement in the hospital while recovering from surgery, testified that he gave the statement because he was in a great deal of pain and wanted the detective to leave his hospital room. The second and third witnesses signed their statements because a detective had threatened to arrest them if they did not. Given the unreliability of the three prior statements, combined with the complete lack of physical evidence, the court concluded that the State had not proved Parker guilty beyond a reasonable doubt. *Id*. at 281.

¶ 41 This case is distinguishable from *Arcos*, *Reyes* and *Parker*. Here, the prior inconsistent statements are partially corroborated by the testimony from McGrone, who heard defendant say

at the block party that he was tired of being bullied and robbed by Dillard and was "going to put an end to it," then saw defendant walking away, putting on a black hoodie. McGrone saw defendant grab the front of the hoodie "like he was looking for something that was supposed to be there." McGrone testified the front pouch of the hoodie was hanging low, as though a weight was holding it down. Moreover, there is no indication in the record on appeal that the jury found the other witnesses wholly incredible, as the trial judge did in *Arcos*. The prior inconsistent statements from the witnesses here were not mere "yes" and "no" answers to leading questions from the State, as was the case in *Reyes*. The trial testimony from Triplett, Carwell and Robinson, was not exculpatory, as was the case in *Reyes*. Rather, these three witnesses merely testified at trial they did not see the shooter.

¶ 42 The remaining issue is the purported coercion of these witnesses. Triplett testified he never willingly spoke with the police. Carwell testified she identified defendant because she wanted to leave the police station. Robinson testified the police told him what to say and promised money and early release from prison. This testimony, however, was not uncontroverted. Indeed, Triplett admitted he signed the handwritten statement freely and voluntarily. ASA McNulty testified Triplett said the police treated him well and his statement was given voluntarily. Carwell and Robinson both testified to the grand jury no one made threats or promises to them to induce their grand jury testimony. Detective Bush also testified Carwell never indicated she identified defendant as the shooter in order to leave the police station. Other witnesses, including French, made no claims their testimony was induced by police threats or promises. Furthermore, in general, "it is the jury's decision to assign weight to the statement and

to decide if the statement was indeed voluntary, after hearing the declarant's inconsistent testimony." *People v. Pursley*, 284 Ill. App. 3d 597, 609 (1996).

¶ 43 In short, the general rule that recanted prior inconsistent statements can be sufficient to support a conviction applies. Moreover, the prior statements here were partially corroborated, and the facts presented by the record here do not bring this case within exceptional cases like *Arcos*, *Reyes* and *Parker*. A reasonable jury could have chosen to believe the prior statements from Triplett, Carwell, Robinson and French, identifying defendant as the shooter, over their trial testimony recanting these statements. Accordingly, viewing the evidence in the light most favorable to the prosecution, we conclude the jury rationally could have found defendant guilty of first degree murder beyond a reasonable doubt.

¶ 44 Admission of the Prior Inconsistent Statements

¶ 45 Defendant next argues the trial court denied him a fair trial by permitting the State to introduce cumulative prior inconsistent statements from Triplett, Carwell and Robinson. The State notes defendant forfeited this issue by failing to object and include this issue in a posttrial motion. *People v. Thompson*, 238 Ill. 2d 598, 611-13 (2010). Defendant concedes he forfeited this issue by failing to raise it in his posttrial motion. *E.g.*, *People v. Johnson*, 238 Ill. 2d 478, 484 (2010) (citing *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)). However, defendant asks us to review this issue pursuant to Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967).

¶ 46 Rule 615(a) creates an exception to the forfeiture rule by allowing courts of review to note "[p]lain errors or defects affecting substantial rights." Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). Under Illinois' plain error doctrine, a reviewing court may consider a forfeited claim when:

> " '(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the strength of the evidence.' " *Johnson*, 238 Ill. 2d at 484 (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007)).

The plain error doctrine is intended to ensure that a defendant receives a fair trial, but it does not guarantee every defendant a perfect trial. *Johnson*, 238 Ill. 2d at 484. Rather than operating as a general savings clause, it is construed as a narrow and limited exception to the typical forfeiture rule applicable to unpreserved claims. *Id.* The burden of persuasion rests with the defendant under both prongs of the plain error analysis. *People v. Sargent*, 239 Ill. 2d 166, 190 (2010). The ultimate question of whether a forfeited claim is reviewable as plain error is a question of law reviewed *de novo*. *Johnson*, 238 Ill. 2d at 485.

¶ 47 Plain error analysis requires that we first determine whether any error occurred at all. *Thompson*, 238 Ill. 2d at 613. Drawing on the general rule prohibiting introduction of prior consistent statements, defendant claims that once the court admitted one prior inconsistent statement, the court was prohibited from admitting additional inconsistent statements consistent with the first. This court has rejected the same argument in prior cases. *People v. White*, 2011 IL App (1st) 092852, ¶ 49 (and cases cited therein). Defendant attempts to distinguish *White* by claiming the witnesses here were subjected to coercive tactics that dissipated over time. Defendant cites no authority in support of this proposition and offers no argument not already

rejected in *White* why statements given under these circumstances should be admissible once, but not twice.

¶ 48 Moreover, as noted earlier, the testimony regarding the alleged coercion here was equivocal. Triplett testified he did not willingly speak to the police, but never claimed that his statement or grand jury testimony was coerced. Carwell and Robinson both testified to the grand jury no one made threats or promises to them to induce their grand jury testimony. Detective Bush also testified Carwell never indicated she identified defendant as the shooter in order to leave the police station. Defendant does not even establish that Carwell was not free to leave the police station.

¶ 49 Defendant also asserts this case law is ill-reasoned, which we reject for reasons already stated by this court in *White*. This court has reasoned that the rule barring prior consistent statements, or its "underlying rationale," cannot be easily grafted onto the rules allowing for admission of prior inconsistent statements. *E.g.*, *id*. at ¶ 51. Prior consistent statements are generally barred because they are likely to unfairly enhance a witness's credibility simply because the statement has been repeated, whereas prior inconsistent statements are a vital tool to challenge witness credibility by contradicting and discrediting trial testimony. See id. at ¶¶ 51-52.

> "While a blanket prohibition (with limited exceptions) makes sense for prior consistent statements, applying that same general bar to inconsistent statements that are consistent with each other would frustrate the legislature's goal of discouraging recanting witnesses." *Id*. at ¶ 53.

Accordingly, as with other types of admissible evidence, any limitation on the number of prior inconsistent statements rests within the sound discretion of the trial court. *Id*. at ¶ 54.

¶ 50 Thus, defendant's remaining argument is that the trial court abused its discretion by admitting cumulative evidence. This court, however, has repeatedly held (for the reasons just explained) that the introduction of more than one statement that is inconsistent with a witness's trial testimony is proper. *E.g.*, *People v. Santiago*, 409 Ill. App .3d 927, 932 (2011). This necessarily implies the admission of two prior inconsistent statements by a witness is proper. In this case, the jury learned of two prior inconsistent statements by Triplett, Carwell and Johnson. Thus, under our case law, defendant cannot show error – let alone plain error – on this point. Accordingly, we conclude defendant has failed to show he was denied a fair trial by the admission of these prior inconsistent statements.

¶ 51 The Constitutionality of the Automatic Transfer Provision

¶ 52 Defendant was 15 years old at the time of the murder, but was prosecuted as an adult pursuant to the automatic transfer provision of the Juvenile Court Act (705 ILCS 405/5-130(1)(a) (West 2006)), which provides in part that 15-and 16-year-old defendants charged with first degree murder are to be prosecuted under the Criminal Code of 1961 (720 ILCS 5/1-1 to 47-25 (West 2006)). Defendant argues the automatic transfer provision violates "the due process clause," the prohibition against cruel and unusual punishment found in the eighth amendment to the United States Constitution, and the proportionate penalties clause of our state constitution, "because it subjects 15- and 16-year-old juvenile defendants to automatic transfer to adult court without a transfer hearing to determine who could benefit from the rehabilitative purposes of

juvenile court." Defendant did not raise the constitutionality of the automatic transfer provision in the trial court, but the constitutionality of a statute may be raised at any time.[2] *E.g.*, *People v. Wright*, 194 Ill. 2d 1, 23 (2000).

¶ 53 "All statutes are presumed to be constitutional, and the burden of rebutting that presumption is on the party challenging the validity of the statute to demonstrate clearly a constitutional violation. [Citation.] If reasonably possible, a statute must be construed so as to affirm its constitutionality and validity." *People v. Greco*, 204 Ill. 2d 400, 406 (2003). Whether a statute is constitutional involves a question of law, and our review is *de novo*. *People v. McCarty*, 223 Ill. 2d 109, 135 (2006).

¶ 54 Without specifically identifying whether defendant is claiming the automatic transfer provision in the Illinois Juvenile Court Act violates substantive or procedural due process, defendant claims generally that he was deprived of life, liberty or property without due process of law, presumably under both the United States and Illinois constitutions. U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2. Illinois courts have repeatedly found the automatic transfer provision (and its predecessor) does not violate a juvenile offender's substantive or procedural due process rights. See, *e.g.*, *People v. J.S.*, 103 Ill. 2d 395, 402-05 (1984); *People v. Patterson*,

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[2] Of course, defendant must *adequately* raise the issue. Defendant also asserts in passing that the statute is unconstitutional as applied to him, but makes no specific argument and cites no authority in support of his assertion on appeal, thereby forfeiting the argument on appeal. Ill. S. Ct. R. 341(h)(7) (eff. Sept.1, 2006).

2012 IL App (1st) 101573, ¶ 27, *appeal allowed*, No. 115102 (Jan. 30, 2013); *People v. Croom*, 2012 IL App (4th) 100932, ¶¶ 13-18; *People v. Sanders*, 2012 IL App (1st) 102040, ¶¶ 33-35; *People v. Jackson*, 2012 IL App (1st) 100398, ¶¶ 13-17; *People v. Salas*, 2011 IL App (1st) 091880, ¶¶ 75-79; *People v. Reed*, 125 Ill .App. 3d 319, 322-25 (1984).

¶ 55 Defendant relies on two United States Supreme Court cases: *Roper v. Simmons*, 543 U.S. 551 (2005); and *Graham v. Florida*, 560 U.S. ___, 130 S. Ct. 2011 (2010). In *Roper*, the 17-year-old defendant committed murder and did not fall within the jurisdiction of Missouri's juvenile court system. He was tried and convicted as an adult and sentenced to death. The issue before the Court was whether the 17-year-old's death penalty sentence violated the eighth amendment's prohibition of cruel and unusual punishment. The United States Supreme Court held that the eighth and fourteenth amendments prohibit a sentence of death on defendants who were under the age of 18 at the time of the commission of their crime. *Roper*, 543 U.S. at 578.

¶ 56 In *Graham*, the 16-year-old defendant was involved in an attempted robbery. Pursuant to Florida's automatic transfer provision, he was charged as an adult, and he pled guilty to armed burglary with assault and battery and attempted armed robbery. He was initially sentenced to concurrent three-year terms of probation, but when he violated his probation by committing a home-invasion robbery, possessing a firearm, associating with others engaged in criminal activity and attempting to avoid arrest, the court revoked his probation and sentenced Graham to what, in effect, was life in prison without parole. The *Graham* court held that the United States Constitution's eighth amendment does not permit a sentence of life without parole for a juvenile criminal who does not commit a homicide. *Graham*, 560 U.S. at ____, 130 S. Ct. at 2030.

¶ 57 Defendant argues, based on the holdings in *Roper* and *Graham*, that it is not rational to automatically transfer 15- and 16-year-olds to adult court when an adult sentence does not serve a legitimate penological justification, such as: (1) deterrence; (2) retribution; (3) incapacitation; and (4) rehabilitation. See *id*. at _____, 130 S. Ct. at 2028-30. We rejected this exact argument in both *Croom* and *Jackson*, noting *Roper* and *Graham* did not address due process arguments and concerned challenges to sentencing statutes, not automatic transfer statutes. *Croom*, 2012 IL App (4th) 100932, ¶ 16; *Jackson*, 2012 IL App (1st) 100398, ¶ 16. That certain adult sentences may not be constitutionally imposed on certain juvenile offenders does not compel the conclusion that juvenile offenders charged with first degree murder may not be tried in adult court.

¶ 58 Defendant also relies on the holdings in *Roper* and *Graham* to argue the automatic transfer provision violates the proportionate penalties clause of our state constitution (Ill. Const. 1970, art. I, § 11), as well as the eighth amendment to the United States Constitution as incorporated against the states by the fourteenth amendment (U.S. Const. amends. VIII, XIV). Our supreme court has held that the "proportionate penalties clause is coextensive with the cruel and unusual punishment clause. [Citations.] Both clauses apply only to the criminal process – that is, to direct actions by the government to inflict punishment." *In re Rodney H.*, 223 Ill. 2d 510, 518 (2006). Accordingly, this court has rejected the argument defendant makes here. "Because the automatic transfer provision of the Illinois Juvenile Court Act imposes neither a penalty nor punishment, the proportionate penalty clause of the Illinois Constitution is inapplicable." *Jackson*, 2012 IL App (1st) 100398, ¶ 19; see *Salas*, 2011 IL App (1st) 091880, ¶

70. Indeed:

> "The automatic transfer provision is not a penalty provision in even the broadest sense. It merely dictates for a small class of older juvenile defendants who are charged with the commission of certain heinous crimes where their cases are to be tried. Guilt has not been determined at this stage, let alone what punishment, if any, should be imposed. The automatic transfer provision does not dictate any form of punishment as that term is used throughout criminal statutes. Because the automatic transfer provision does not mandate or even suggest a punishment, any analysis as to whether or not it violated the eighth amendment's proscription against cruel and unusual punishment is futile. The automatic transfer provision does not impose any punishment. Therefore, it is not subject to the eighth amendment. We find no violation of the cruel and unusual punishment clause." *Jackson*, 2012 IL App (1st) 100398, ¶ 24; see *Salas*, 2011 IL App (1st) 091880, ¶ 66-68.

In this case, defendant offers no new argument that would cause us to reconsider our decisions in cases like *Jackson* and *Salas*.

¶ 59 In short, we conclude defendant's constitutional challenges to the automatic transfer provision fail.

¶ 60 Sentencing

¶ 61 Lastly, defendant argues his 50-year sentence is excessive, where he was 15-years-old at the time of the murder, obtained his general education degree and had no criminal record prior to this case. The legislature has established the range of sentences permissible for a particular

offense. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). "Within that statutory range, the trial court is charged with fashioning a sentence based upon the particular circumstances of the individual case ***." *Id*. at 55. "In determining an appropriate sentence, the defendant's history, character, rehabilitative potential, the seriousness of the offense, the need to protect society and the need for deterrence and punishment are to be considered." People v. Johnson, 2013 IL App (1st) 103361, ¶ 48.

¶ 62 It is well settled that the trial court has broad discretionary powers in imposing a sentence, and the trial court's sentencing decision is entitled to great deference. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010) (citing *People v. Stacey*, 193 Ill. 2d 203, 209 (2000)). The trial court is generally in a better position than the reviewing court to determine the appropriate sentence, as the trial court has the opportunity to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits and age. *People v. Streit*, 142 Ill. 2d 13, 19 (1991). Consequently, the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently. *Id*. Absent an abuse of discretion by the trial court, the sentence may not be altered on review. *Id*. An abuse of discretion occurs only when the ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view. See *People v. Ortega*, 209 Ill. 2d 354, 359 (2004); *People v. Illgen*, 145 Ill. 2d 353, 364 (1991).

¶ 63 This discretion, however, is not without limitation. *Stacey*, 193 Ill. 2d at 209. A sentence which falls within the statutory range is presumptively proper and does not constitute an abuse of discretion unless it is manifestly disproportionate to the nature of the offense. *People v.*

Hauschild, 226 Ill. 2d 63, 90 (2007). Conversely, a sentence within statutory limits will be deemed excessive and a result of an abuse of discretion where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. *Fern*, 189 Ill. 2d at 54.

¶ 64 In this case, defendant was convicted of first degree murder, which carries a sentence of between 20 and 60 years in prison. 730 ILCS 5/5-8-1 (West 2002). Because defendant "personally discharged a firearm that proximately caused *** 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 2002). Thus, in this case, the trial court imposed a sentence only five years over the statutory minimum. The transcript of the sentencing hearing indicates the trial judge acknowledged that a 45-year sentence may seem like a death sentence to a 15-year-old, but also noted the senseless nature of the murder and the need to deter similar crimes in the future.

¶ 65 Defendant nevertheless contends the trial judge failed to give these factors adequate consideration; we disagree. Defendant argues his case is a "prime example of when the minimum sentence is warranted," but fails to show his near-minimum sentence constitutes an abuse of discretion. Defendant makes no real argument that the sentence he received for the murder of Ware is greatly at variance with the spirit and the purpose of the law or manifestly disproportionate to the nature of the offense. Instead, defendant's argument in this regard is really nothing more than another attack on the evidence against him at trial and a request for us to reweigh factors the sentencing court considered. We have been warned to "proceed with great

caution," and we "must not substitute [our] judgment for that of the trial court merely because [we] would have weighed the factors differently." *Fern*, 189 Ill. 2d at 53; see *Streit*, 142 Ill. 2d at 19. The sentence in this case is not arbitrary, fanciful, or unreasonable. Accordingly, we find no abuse of discretion by the trial court in imposing it.

¶ 66 CONCLUSION

¶ 67 In sum, we conclude the evidence was sufficient to prove defendant guilty of first degree murder beyond a reasonable doubt. We also conclude the trial judge did not err in admitting the prior inconsistent oral statements, written statements and grand jury testimony of those witnesses who recanted these statements at trial. We further conclude the automatic transfer provision of the Juvenile Court Act is constitutional. Lastly, we conclude defendant's 50-year sentence is not excessive. For all of the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 68 Affirmed.