FIRST DIVISION
SEPTEMBER 10, 2012

No. 1-10-3284



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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the |
| | ) | Circuit Court of |
| Plaintiff-Appellee, | ) | Cook County. |
| | ) | |
| v. | ) | No. 06 CR 12115 |
| | ) | |
| MICHAEL BROADWAY, | ) | Honorable |
| | ) | Angela M. Petrone, |
| Defendant-Appellant. | ) | Judge Presiding |

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JUSTICE CUNNINGHAM delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

**ORDER**

¶ 1 *Held*: Evidence was sufficient to prove the defendant guilty of first-degree murder; the trial court properly admitted evidence of a prior crime through a prosecutor's testimony; defense counsel did not provide ineffective assistance of counsel; the State's comments during closing argument did not deny the defendant a fair trial; and the trial court's imposition of a 75-year sentence was proper.

¶ 2 Following a jury trial in the circuit court of Cook County, defendant Michael Broadway was convicted of two counts of first-degree murder and sentenced to 75 years of imprisonment. On direct appeal, the defendant argues that: (1) the State failed to prove his guilt beyond a reasonable doubt; (2) the trial court erred in admitting evidence of a prior crime that did not involve the defendant, and

in allowing the evidence to be presented through a prosecutor's testimony; (3) defense counsel provided ineffective assistance of counsel by failing to request limiting jury instructions for certain evidence admitted at trial; (4) comments made by the State during closing argument denied him a fair trial; and (5) sentencing errors made by the trial court require that his sentence be reduced or the cause remanded for a new sentencing hearing. For the following reasons, we affirm the judgment of the circuit court of Cook County, but order that the mittimus be corrected.

¶ 3 BACKGROUND

¶ 4 On June 10, 2005, at approximately 5 p.m., the defendant fatally shot the victim, Willie Madlock (Willie), at 411 West 105th Street in Chicago, Illinois, where Willie was repairing a car with eyewitness Eddie Reed (Eddie). On July 15, 2005, a warrant was issued for the defendant's arrest.

¶ 5 On March 8, 2006, the defendant was arrested in Minnesota and on April 24, 2006, was extradited from Minnesota to Chicago. In May 2006, the defendant was charged with multiple counts of first-degree murder and unlawful use of a weapon by a felon.

¶ 6 On February 16, 2010, the State filed two separate pre-trial motions to admit evidence. The first motion, styled as a "motion to admit relevant evidence of prior criminal case where defendant was not a party" (motion to admit prior criminal case), requested that evidence of a previous May 2004 shooting of Willie be admitted as relevant to the defendant's motive for killing Willie in June 2005. In the motion to admit prior criminal case, the State described a May 2004 shooting incident

in which Elbert Conway (Conway)[1] and Louis Sanders (Sanders), who was a relative of the defendant, shot Willie multiple times. Shortly after the May 2004 shooting, Sanders was killed by an unidentified person. Willie, who had survived the May 2004 shooting, testified against Conway at trial (the Conway trial), and Conway was ultimately convicted of attempted first-degree murder and aggravated battery of Willie. The State alleged that the defendant, who was not involved in the May 2004 shooting, visited Conway in jail two days after the Conway trial. Within three weeks of visiting Conway in jail, the defendant shot and killed Willie in the instant case.

¶ 7 The State also filed a second motion, a "motion to admit gang evidence," which sought to introduce evidence of the defendant as a member of the street gang, Vice Lords, and to introduce evidence that Willie was a member of a rival street gang, Gangster Disciples. In response, the defendant filed motions objecting to the State's motions to admit evidence, including a motion *in limine* to bar the testimony of Assistant State's Attorney Beth Pfeiffer (ASA Pfeiffer) regarding the Conway trial.

¶ 8 Following a hearing in March 2010, the trial court, over defense counsel's objections, granted the State's motion to admit prior criminal case and motion to admit gang evidence, on the basis that the evidence could show the defendant's motive to kill Willie. The trial court further ruled that evidence of four telephone calls made by the defendant while he was held in custody in a Minnesota jail may be admitted because they were relevant as to whether the defendant had attempted to influence a witness in the case.

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[1]The record reveals different spellings of Conway's first name–"Elbert" and "Albert."

¶ 9 On March 3, 2010, a jury trial commenced. In its opening statement, the State proffered several theories of motive for Willie's murder. The theories were: that the defendant and Willie were in rival street gangs; that the defendant believed his nephew,[2] Sanders, was killed in retaliation for the shooting of Willie in May 2004 by Conway and Sanders; and Willie had testified against rival gang member Conway in Conway's trial for shooting Willie in May 2004.

¶ 10 Officer William Wieczorek (Officer Wieczorek) testified that on June 10, 2005, at approximately 5 p.m., he and his police partner responded to an emergency call at the crime scene. Upon their arrival, Officer Wieczorek spoke with two witnesses, Eddie, as well as Earnest McMiller (Earnest), who gave information about a chrome revolver and a description of the offender to Officer Wieczorek. Eddie described the shooter as a black male with medium complexion between 20 to 25 years of age, 5 feet 7 inches in height, "heavy build," about 250 pounds, bald, and who wore a green shirt and blue jeans. However, neither Eddie nor Earnest provided Officer Wieczorek with the name of the shooting suspect.

¶ 11 Eddie testified that he was a neighborhood car mechanic whose nickname was "Joe the mechanic." On June 10, 2005, he and Willie were repairing Willie's car on an "auto pound" lot located at 411 West 105th Street when a gunman appeared and shot Willie, who was on the passenger side of the vehicle. Immediately before the shooting, Eddie was under the hood of the vehicle and approximately five to ten feet away from Willie and heard him say, "don't shoot me, man," followed by several popping sounds. Eddie testified that the shooter wore a green shirt and

[2]Sanders was described in the record as either the defendant's nephew or cousin.

carried a silver gun, but that he did not see the shooter's face. At trial, he denied giving the police a physical description of the shooter at the crime scene. After speaking with the police at the crime scene, Eddie went to the police station for further questioning, where he stayed the rest of the night. At 1:20 a.m. on June 11, 2005, Detective Tim Murphy (Detective Murphy) and Detective Dan Stover (Detective Stover) had a conversation with Eddie, who told them that Sanders was related to the defendant. However, at trial, Eddie denied telling Detectives Murphy and Stover that the defendant was the shooter. Later that day, on June 11, 2005, Eddie returned home, after which the detectives visited Eddie at his home and showed him a photographic array. According to Eddie, the detectives asked him "is this Mike?" and "which one is Mike?" to which Eddie responded by pointing to a photograph of the defendant. He acknowledged that the photographic array bore his signature under the defendant's photograph. In July 2005, Eddie testified before the grand jury, and spoke again with the detectives, to whom he expressed his concern for the safety of his family. In his grand jury testimony, Eddie identified the defendant as the perpetrator who shot and killed Willie. In April 2006, Eddie viewed a police lineup at the police station, where Eddie claimed that the police forced him to participate, that he feared for the safety of his family, and that he only identified the defendant because the police asked him "which one is Mike?" Eddie further testified that Willie was a Gangster Disciples member, that the lot where the shooting occurred was in Vice Lords territory, that Eddie had known the defendant since the defendant was a child, that Sanders was related to the defendant, and that both the defendant and Conway belonged to the Vice Lords street gang. Eddie stated that he was neither given money nor threatened to change his testimony at trial.

¶ 12 Earnest testified that on June 10, 2005, he was in his home near 411 West 105th Street when

he heard gunshots from a distance of about 30 yards away. Upon hearing the gunshots, Earnest looked out a window and observed an armed man in a lime green "pullover Polo shirt." Earnest could clearly see the outline of the shooter's body, but a large tree obstructed his view of the perpetrator's face. After the shooting, Earnest saw the shooter flee into a nearby alley, at which time Earnest also noticed that the shooter was wearing blue jeans and gym shoes. Earnest then called the police to report the crime, and noticed Eddie, also known as "Joe the mechanic," push the vehicle away from the victim. Upon the arrival of police officers, Earnest provided the following physical description of the perpetrator: African-American male; mid-20s in age; approximately 5 feet 8 inches to 6 feet tall; around 240 to 270 pounds; short hair or bald. Subsequently, Earnest was unable to identify the perpetrator in an initial photographic array, but identified the defendant in a police lineup "based on his physical stature and the shape of his head, that most likely was the person." Earnest noted that the defendant had more facial and head hair in the physical lineup than during the shooting. After the police lineup, Earnest was shown another group of photographs, from which he identified the defendant as the shooter because "that was the most likely of the people that [he] looked at that resembles the person." The detectives also showed Earnest a lime green Polo shirt and a pair of blue jeans, which Earnest identified as similar to clothing worn by the shooter.

¶ 13 Forensics Investigator William Moore (Forensics Investigator Moore) testified that he found a tee shirt and blood samples belonging to the victim at the crime location, that he photographed and videotaped the area, but that he did not recover any bullets or shell casings from the crime scene.

¶ 14 ASA Pfeiffer testified that in 2005, she was assigned to prosecute the State's case against Conway for the attempted murder of Willie at 521 West 103rd Place in Chicago in May 2004.

According to ASA Pfeiffer, Sanders could not be prosecuted for the attempted murder of Willie because Sanders had been shot and killed shortly after the May 2004 shooting. ASA Pfeiffer stated that the defendant was not a suspect in the shooting of Sanders. At the Conway trial, Willie testified against Conway, after which Conway was convicted of attempted murder of Willie and was scheduled to be sentenced on June 13, 2005. In the instant case, outside the presence of the jury, defense counsel renewed his objection to ASA Pfeiffer's testimony.

¶ 15 Detective Murphy testified that he and Detective Stover investigated the shooting death of Willie in 2005. On June 10, 2005, the detectives spoke with Eddie at the crime scene, who informed them of the events of the shooting, gave a description of the offender, but did not provide the name of the shooter. Eddie had described the offender as a black male with medium complexion; approximately 25 years old; 250 pounds; balding head; and who was wearing a green shirt and blue jeans. Detective Murphy also spoke with Earnest, who gave a similar physical description of the shooter. Eddie agreed to accompany the police to the police station for further questioning because Detective Murphy believed that he had additional information about the crime. On June 11, 2005, at approximately 1:20 a.m., Detective Murphy interviewed Eddie at the police station. During that interview, Eddie named the defendant, a Vice Lords gang member, as the shooter. Eddie further informed Detective Murphy that the defendant lived downstate, that the defendant had not visited Chicago in a long time, and that Eddie was scared to speak with the police because he still had to "live in the neighborhood." On June 11, 2005, at approximately 11 a.m., the detectives visited Eddie's home where Eddie signed an advisory form and identified the defendant in a photographic array as Willie's killer. However, Earnest, who also viewed the photographic array on June 11, 2005,

could not identify the perpetrator. Subsequently, in the course of police investigations, Detective Murphy learned that the defendant was living in Carbondale, Illinois, and that the defendant had visited Conway in jail on May 21, 2005. In July 2005, a search warrant was executed for the defendant's residence in Carbondale, where the detectives recovered a lime green polo shirt and a pair of blue jeans. Eddie subsequently provided more details of the shooting to the police–including that Willie had yelled "don't shoot me, Mike" prior to being shot–and testified before the grand jury. In March 2006, Minnesota police officers arrested the defendant, after which Detectives Murphy and Stover traveled to Minnesota where they interviewed an individual named John Williams (John) in federal custody. During that time, they also informed the defendant that he was a suspect in Willie's murder. On April 24, 2006, the defendant was extradited to Chicago, after which a police lineup was conducted. Eddie told the detectives that he was still scared and did not want to be involved anymore, and that he wrote "refused" on the signature line of the police lineup advisory form. However, Eddie agreed to view the police lineup and identified the defendant as the shooter by saying, "[t]hat's Mike. That's the one that shot Willie Madlock." Detective Murphy denied that either he or Detective Stover ever prompted Eddie to identify the defendant as the shooter by asking him to "pick out Mike" or by asking him "which one is Mike?"

¶ 16 John testified at the defendant's trial that he was a member of the Four Corner Hustler Vice Lords street gang, which was affiliated with the Vice Lords, and that he grew up near the defendant in Chicago and had known the defendant for about nine years at the time of trial. In October 2004, John started trafficking drugs weekly between Minnesota and Chicago. In 2007, he was convicted of drug trafficking in Minnesota and was in federal custody at the time of the defendant's trial. John

testified that he had an agreement with the State whereby the State would write a letter to the U.S. Attorney and the Minnesota judge, asking for leniency in John's sentence in his Minnesota case, in exchange for John's truthful testimony at the defendant's trial. John stated that he understood that the Minnesota judge had the discretion to reduce his jail time. According to John, the Gangster Disciples and the Vice Lords gangs were in a rivalry in 2005. In the fall of 2005, John was surprised to see the defendant in Minnesota, because John thought the defendant was at school in Carbondale. Subsequently, John and the defendant began to "hang out" together and the defendant moved in with John in Minnesota in December 2005. John testified that on one particular night in January 2006, the defendant refused to drive him to a nightclub because "the police was looking for [the defendant]." John noted that he "sort of knew" about Willie's murder from one of his many trips to Chicago prior to encountering the defendant in Minnesota. John stated that the defendant eventually told him the following details about Willie's murder. According to John, the defendant murdered "a guy named Willie because he had something to do with his cousin getting killed"; that "Lou" was the name of the defendant's cousin; that the murder took place at a mechanic's shop in an alley; that he shot Willie three times and fled to Carbondale; that the crime occurred in the daytime which the defendant noted was a "dumb move" because he "should have waited until dark"; that while he was in Carbondale, the police raided his house and recovered clothes which he did not wear on the day of the shooting; that the defendant then left Carbondale and returned to Chicago; and eventually fled to Minnesota when he noticed detectives in his Chicago neighborhood. John further testified that the defendant was angry that Willie was allowed to be on the car lot on the day of the murder, that the car lot was in Vice Lords territory, that the Vice Lords knew that Willie had something to do with

Sanders' death, but that this was not the reason why the defendant shot Willie. When John was arrested by federal authorities in 2006 for drug trafficking, federal authorities asked whether he had any information about "a guy that was on the run for murder" which he could use to "help [himself]." In response, John provided the federal authorities information regarding the defendant's whereabouts.

¶ 17 At trial, the parties stipulated that forensic testing revealed no blood on the lime green polo shirt and blue jeans recovered from the defendant's Carbondale apartment. Over defense counsel's objection, four audio recordings of telephone calls made by the defendant while he was incarcerated in Minnesota were published to the jury. In the first telephone call, the defendant asked a woman about "the grease monkey," and directed her to "go find him a[n] 'L .' " The woman responded that the "grease monkey" wanted "ten–now and later." In the second telephone call, the defendant told an unidentified person that the mechanic "wanted $20 now." The individual then asked, "2-0-0-0-0?" to which the defendant replied, "man, man...$20." The individual then told the defendant that "a nickel will be cool" and that he would get the "paperwork" when the defendant was formally charged. The individual further told the defendant that his "girl" needed to "holler at the mechanic." In the third telephone conversation, a woman told the defendant that she was told to stay "on top of Joe." The fourth telephone conversation reveals the defendant asking an unidentified man whether he had hollered at "Oil Can," to which the man responded that he had not seen any real progress and that a "number" was not being discussed.

¶ 18 Following closing arguments, the jury found the defendant guilty of first-degree murder. The jury specifically found that the defendant "personally discharged a firearm that proximately caused the death of another person."

¶ 19 On April 28, 2010, the defendant filed a motion for a new trial, which was denied by the trial court on June 1, 2010. Subsequently, the trial court sentenced the defendant to 45 years of imprisonment for first-degree murder, and an additional 30 years "for the enhancement that he personally discharged a firearm that proximately caused death." The trial court later denied the defendant's motion to reconsider sentence. On June 10, 2010, the defendant filed a notice of appeal before this court.

¶ 20 ANALYSIS

¶ 21 We determine the following issues: (1) whether the State proved the defendant's guilt beyond a reasonable doubt; (2) whether the trial court erred in admitting evidence of the details of the May 2004 shooting of Willie, and in allowing the evidence to be presented through ASA Pfeiffer's testimony; (3) whether defense counsel provided ineffective assistance of counsel by failing to request limiting jury instructions for certain evidence admitted at trial; (4) whether comments made by the State during closing argument denied the defendant of a fair trial; and (5) whether the trial court committed sentencing errors which warrant a sentence reduction or a new sentencing hearing.

¶ 22 We first determine whether the State proved the defendant's guilt beyond a reasonable doubt.

¶ 23 The defendant argues that the evidence was insufficient to find him guilty beyond a reasonable doubt where Eddie and Earnest testified that they did not see the shooter's face, the defendant's incriminating statements to John were improbable and incredible, John had a clear motive to fabricate his testimony against the defendant, and the four audio recordings of the defendant's telephone calls from a Minnesota jail were not dispositive of the defendant's guilt.

¶ 24 The State contends that the defendant was proven guilty beyond a reasonable doubt of

murdering Willie, where the defendant admitted to committing the crime and Eddie's and Earnest's eyewitness testimony supported the admission of guilt. The State further argues that the four telephone calls made by the defendant also showed a consciousness of guilt because they suggested the defendant's attempt to pay Eddie in exchange for his silence.

¶ 25 When the sufficiency of the evidence is challenged on appeal, we must determine " 'whether, after viewing the evidence in the light most favorable to the [State], *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Graham*, 392 Ill. App. 3d 1001, 1008-09, 910 N.E.2d 1263, 1271 (2009), quoting *Jackson v. Virginia*, 443 U.S. 307, 319, 61 L. Ed. 2d 560, 99 S. Ct. 2781, 2789 (1979). A reviewing court affords great deference to the trier of fact and does not retry the defendant on appeal. *People v. Smith*, 318 Ill. App. 3d 64, 73, 740 N.E.2d 1210, 1217 (2000). It is within the province of the trier of fact "to assess the credibility of the witnesses, determine the appropriate weight of the testimony, and resolve conflicts or inconsistencies in the evidence." *Graham*, 392 Ill. App. 3d at 1009, 910 N.E.2d at 1272. A reviewing court will not substitute its judgment for that of the trier of fact. *People v. Sutherland*, 223 Ill. 2d 187, 242, 860 N.E.2d 178, 217 (2006). A criminal conviction will not be reversed "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt." *Graham*, 392 Ill. App. 3d at 1009, 910 N.E.2d at 1271.

¶ 26 Viewing the evidence in the light most favorable to the State, we find that there was sufficient evidence for a rational trier of fact to find the defendant guilty of first-degree murder. Here, Eddie and Earnest gave similar physical descriptions of the shooter to the police on the day of Willie's murder. Evidence shows that at the police station on June 11, 2005, Eddie informed

Detectives Murphy and Stover that the defendant had shot and killed Willie, and provided details about the defendant which furthered police investigations. Later that same day, Eddie positively identified the defendant in a photographic array as Willie's killer. Evidence also shows that in July 2005, upon the detectives' return from Carbondale, Eddie provided more details of the shooting to the police, including the fact that Willie had yelled "don't shoot me, Mike" prior to being shot. While Eddie was apprehensive and refused to sign the police lineup advisory form, he agreed to view the police lineup and identified the defendant as the shooter. The jury also heard evidence that Eddie had known the defendant since the defendant was a child, that the shooting occurred in broad daylight, and that Willie was repairing his car with Eddie at the time of the shooting. See *People v. Herron*, 2012 IL App (1st) 090663, ¶15 ("a single witness' identification of the defendant is sufficient to support a conviction if the witness viewed the defendant under circumstances permitting a positive identification"). Evidence also reveals that the defendant made incriminating statements to John regarding the murder of Willie, even stating that he "should have waited until dark" to attack Willie; and that the police recovered clothing from his home which he had not worn on the day of the shooting. Further, evidence was presented at trial that rivalry existed between the Vice Lords and Gangster Disciples in 2005, and that the defendant's relative, Sanders, was killed shortly after the May 2004 shooting. Based on the evidence at trial, a reasonable jury could have found that the defendant shot and killed Willie, and could reasonably have inferred that the defendant committed murder in retaliation for Sanders' death or in defense of the Vice Lords. Accordingly, evidence presented at trial was sufficient to find the defendant guilty beyond a reasonable doubt. We find the case cited by the defendant, *People v. Pellegrino* (30 Ill. 2d 331, 196 N.E.2d 670 (1964)), to be

distinguishable from the facts of the case at bar. *Pellegrino*, 30 Ill. 2d 331, 196 N.E.2d 670 (conviction reversed where the defendant never made any incriminating statements about the murder; one witness had identified two other individuals as the killer before identifying the defendant; and a second witness was drunk, had the "shakes," could not walk more than five feet without holding the wall, and could not recognize the person standing only three feet away from her).

¶ 27 While the defendant makes a number of arguments regarding the improbability and incredibility of John's testimony, and the weight to be afforded to Eddie's and Earnest's trial testimony and the four telephone recordings published to the jury, we decline his invitation to substitute our judgment for that of the jury as the trier of fact. Here, the jury heard evidence that John was testifying against the defendant in exchange for a letter to the Minnesota judiciary requesting a possible sentence reduction for John, and further heard John's testimony that the defendant had confessed to him about murdering Willie. However, it was the jury's role as the trier of fact to determine whether John was credible and how much weight to give his testimony. See *Graham*, 392 Ill. App. 3d at 1009, 910 N.E.2d at 1272 (it is within the jury's province to "assess the credibility of the witnesses, determine the appropriate weight of the testimony, and resolve conflicts or inconsistencies in the evidence"). Thus, the jury could reasonably have concluded that John's agreement with the State only affected his motivation for testifying against the defendant, rather than the veracity of his testimony. Likewise, we decline to substitute our judgment for that of the jury in determining the credibility of Eddie's and Earnest's testimony. While Eddie denied at trial that he told the police about the defendant's involvement in the crime, the jury heard evidence that Eddie's grand jury testimony specifically identified the defendant as the shooter; that Detective

Murphy's testimony revealed that Eddie positively identified the defendant in the photographic array and police lineup as the perpetrator; and that Eddie feared for his safety in cooperating with the police. Therefore, we find that the jury could reasonably have found Detective Murphy's testimony regarding Eddie's identification of the defendant to be credible, and disregarded or afforded little weight to the portions of Eddie's trial testimony which recanted his pre-trial identifications of the defendant.

¶ 28 We next determine whether the trial court erred in admitting evidence of the Conway trial, and in allowing the evidence to be presented through ASA Pfeiffer's testimony.

¶ 29 The defendant argues that, over defense counsel's objection, the trial court erred in admitting evidence of the Conway trial through the testimony of ASA Pfeiffer. The defendant contends that the evidence of the Conway trial was irrelevant and further argues that the trial court abused its discretion in allowing ASA Pfeiffer to testify to this improper evidence when it could have been admitted by other means.

¶ 30 The State counters that evidence of the Conway trial could not be considered "other crimes evidence" because the defendant was not involved in the May 2004 offense and thus, the evidence could not be improperly used to demonstrate the defendant's propensity to commit crime. Even if the evidence complained-of could be considered "other crimes evidence," the State contends, it was properly admitted to show the defendant's motive for murdering Willie. Further, the State argues that any error in admitting evidence of the Conway trial was harmless.

¶ 31 The parties initially disagree as to our standard of review. The defendant urges this court to engage in *de novo* review of this issue because "no facts are in dispute [and] the improper use of

other-crimes evidence exceeded the bounds of the law," which is a legal question subject to *de novo* review. The State urges this court to employ an abuse of discretion standard.

¶ 32 Evidentiary rulings are within the sound discretion of the trial court and will not be reversed absent an abuse of that discretion. *People v. Caffey*, 205 Ill. 2d 52, 89-90, 792 N.E.2d 1163, 1188 (2001). "An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *Id.* at 89, 792 N.E.2d at 1188. However, an exception exists to allow reviewing courts to review evidentiary rulings *de novo*, where the trial court's determination does not involve fact finding or weighing the credibility of the witnesses. *People v. Crowe*, 327 Ill. App. 3d 930, 936, 764 N.E.2d 1174, 1180 (2002). We need not resolve the parties' dispute over the proper standard of review because our conclusion is the same under either standard.

¶ 33 In the case at bar, the State filed a pre-trial motion to admit the prior criminal case, which requested that evidence of the previous May 2004 shooting of Willie be admitted as relevant to the defendant's motive for killing Willie in June 2005. Following a hearing, the trial court granted the motion on the basis that it could show the defendant's motive to kill Willie. At trial, ASA Pfeiffer testified to basic details of the May 2004 shooting–including the time, date and location of the offense–in connection with her prosecution of Conway for the attempted murder of Willie. She noted that Sanders could not be prosecuted for the attempted murder of Willie because Sanders had been shot and killed shortly after the May 2004 shooting of Willie. Detective Murphy also testified at trial that, during the course of police investigations, he learned that the defendant had visited Conway in jail on May 21, 2005.

¶ 34 Typically, other-crimes evidence is admissible "if it is relevant for any purpose other than to show the defendant's propensity to commit crimes." *People v. Lovejoy*, 235 Ill. 2d 97, 135, 919 N.E.2d 843, 864 (2009). Such purposes include motive, intent, identity, and absence of mistake. *People v. Dabbs*, 239 Ill. 2d 277, 283, 940 N.E.2d 1088, 1093 (2010). However, other-crimes evidence should not be admitted if the prejudicial effect of the evidence outweighs its probative value. *Lovejoy*, 235 Ill. 2d at 135, 919 N.E.2d at 864. "The rationale for this rule is not that a defendant's bad character, as evinced by other bad acts, is irrelevant when he is charged with a crime[;] [r]ather, the rule is grounded in the concern that such evidence proves too much." *Dabbs*, 239 Ill. 2d at 284, 940 N.E.2d at 1093.

¶ 35 As the State points out, a preliminary issue which we must address is whether evidence of the May 2004 shooting should be considered "other-crimes evidence," subject to the evidentiary rules as described. We find that the admission of evidence regarding the May 2004 shooting of Willie by Conway and Sanders, and Conway's subsequent trial and conviction for the offense, was not the type of evidence to which policy considerations underlying the preclusion of other-crimes evidence were applicable. We find *People v. Sadaka*, 174 Ill. App. 3d 260, 528 N.E.2d 283 (1988), the State's cited authority, to be instructive.

¶ 36 In *Sadaka*, the defendant appealed his conviction for possession of a controlled substance with intent to deliver, arguing that the trial court erroneously admitted evidence that a slip of paper, recovered from the defendant's person, contained a telephone number registered to an individual who was a convicted heroin trafficker. *Id.* at 262, 528 N.E.2d at 286. Prior to trial, the defendant filed a motion *in limine* seeking to exclude the telephone number and third-party conviction. *Id.* The trial

court ruled that the evidence was relevant to show that the defendant knowingly possessed heroin. *Id.* On appeal, the defendant argued that rules prohibiting other-crimes evidence should be extended to third-party convictions. *Id.* at 263, 528 N.E.2d at 287. In rejecting this argument, the reviewing court emphasized that other-crimes evidence committed by the *accused* is inadmissible to show his bad character, and that the purpose of this evidentiary rule was "to prevent a jury from convicting a defendant because of his propensity or disposition to commit a crime," which impliedly held that such danger was not inherent in admitting evidence of a third-party's conviction. *Id.* Applying these principles to the case at bar, we find that evidence of Conway's trial and conviction for the attempted murder of Willie was a third-party crime that did not involve the defendant, and thus, concerns underlying "other-crimes evidence" are not applicable here.

¶ 37 Even if the contested evidence were considered "other-crimes evidence" in the traditional sense, we find that this evidence was relevant and admissible to prove that the defendant had motive to kill Willie. We further find that the probative value of such evidence, admitted on a limited basis by ASA Pfeiffer and Detective Murphy, was not outweighed by its potential prejudicial effect. Based on the evidence before it, the jury was free to infer that the defendant killed Willie in June 2005 in defense of the Vice Lords or in avenging Sanders' death or Conway's conviction. See *People v. Morales*, 2012 IL App (1st) 101911, ¶¶ 30-34 (evidence of a prior crime was probative of the defendant's involvement in a later robbery and murder, and was "intrinsic" to the charged offense so as to negate the usual requirement that the defendant's involvement in the earlier offense be proved, where the contested evidence gave rise to an inference that the defendant had a motive to help avenge his friends' vendetta and provided an explanation and context for the later robbery and

murder); but *cf. People v. Lucas*, 151 Ill. 2d 461, 603 N.E.2d 460 (1992) (evidence of a plan to eliminate witnesses was inadmissible to show the defendant's consciousness of guilt in a later murder of the victim, absent evidence of a connection between the defendant and the scheme). Further, even if the contested evidence was erroneously admitted, we find such error to be harmless, where, as discussed, apart from this evidence, Eddie's identification of the defendant and the defendant's incriminating statements to John were sufficient to convict him. Therefore, we find that the trial court properly admitted evidence of the May 2004 shooting and Conway's conviction.

¶ 38 The defendant further argues that the trial court abused its discretion in allowing ASA Pfeiffer to testify to evidence of the Conway trial, whose position as a prosecutor improperly lent extra weight to the evidence, which could have been admitted by other means.

¶ 39 The State responds that the "special witness doctrine" was inapplicable in this case, and that, even if it were applicable, the trial court properly allowed evidence to be presented through ASA Pfeiffer's testimony at trial. The State contends that her testimony was not used to bolster anyone's credibility, and defense counsel had refused to stipulate to the evidence and a recitation of the evidence from the transcripts of the Conway trial, which would have been more prejudicial to the defendant. Alternatively, the State argues that any error in allowing ASA Pfeiffer to testify was harmless in light of the overwhelming evidence of the defendant's guilt.

¶ 40 Under the special witness doctrine, "when a party in a criminal case requests the appearance and testimony of a special witness, namely, a prosecutor, judge, or a news reporter, that party is required to (1) specifically state the testimony the party expects to elicit from the witness; (2) state why that testimony is relevant and necessary to the party's case; and (3) state the efforts that party

has made to secure the same evidence through alternative means." *People v. Willis*, 349 Ill. App. 3d 1, 16-17, 811 N.E.2d 202, 214 (2004). We review the trial court's decision to permit special witness testimony under an abuse of discretion standard. *People v. Rodriguez*, 402 Ill. App. 3d 932, 944, 932 N.E.2d 113, 124 (2010).

¶ 41 First, we find unpersuasive the State's contention that ASA Pfeiffer was not a special witness because she was not the prosecutor in the instant case. This court has similarly rejected this argument in *Willis*, where we found a testifying judge to be a special witness despite the fact that he was not the presiding judge in the trial in which he testified. See *Willis*, 349 Ill. App. 3d at 18, 811 N.E.2d at 216. We find that holding to apply with equal force here. Further, we note that, as the State acknowledges in its brief on appeal, the record reveals that the State had represented to the trial court that the special witness doctrine was applicable to this case and that it had met the requisite elements. Therefore, we find that ASA Pfeiffer was a special witness and the special witness doctrine applies in this case.

¶ 42 Because the defendant's arguments center on the third element of the special witness doctrine, our analysis is restricted to determining whether the State had sufficiently stated what efforts it had made to secure the same evidence through alternative means. Based on our review of the record, we find that the State met the requirements of the special witness doctrine. At a hearing prior to trial, the State represented to the trial court that "there really is no other way to enter those facts into evidence, such as the trial began on this day, there was a finding or verdict of guilty on this day, and so and so testified on this day and so and so testified on that day." The State further noted that it understood defense counsel's position not to stipulate to the evidence of the Conway trial, and

assured the trial court that ASA Pfeiffer would not testify in detail about Conway's case. As discussed, ASA Pfeiffer's trial testimony was restricted to the most basic details of the Conway trial. The State makes a persuasive argument that no alternative means were available to secure evidence of the Conway trial. It was within defense counsel's right to decline to stipulate to evidence of the Conway trial, notwithstanding that such stipulation would have eliminated the need for ASA Pfeiffer's testimony. It should be noted that not all facts revealed by ASA Pfeiffer's testimony could have been "read into the record via transcripts," as the defendant suggests. For example, ASA Pfeiffer specifically noted that the defendant "had nothing to do with" the shooting death of Sanders–a detail which the trial court had instructed during pre-trial discussions to be elicited from the witness in order to avoid any prejudice to the defendant before the jury. This fact would not have been in the transcripts of the Conway trial. Thus, we find that the State could not have elicited the same evidence from another source and the third element of the special witness doctrine was met. Therefore, the trial court acted within its discretion in allowing ASA Pfeiffer to testify.

¶ 43 Assuming, *arguendo*, that evidence of the Conway trial should not have been presented by ASA Pfeiffer, such error was harmless in light of other permissible trial evidence of the defendant's guilt. We note that ASA Pfeiffer's testimony was restricted in both content and substance thereby precluding any real prejudice to the defendant.

¶ 44 We next determine whether defense counsel provided ineffective assistance of counsel by failing to request limiting jury instructions for certain evidence admitted at trial.

¶ 45 The defendant argues that defense counsel was ineffective for failing to request limiting jury instructions for evidence of the Conway trial and the "multitude of gang evidence" presented at trial.

¶ 46 The State counters that defense counsel was not ineffective for electing not to request limiting jury instructions that would have drawn the jury's attention to evidence that countered the defendant's theory of defense.

¶ 47 To prevail on a claim of ineffective assistance of counsel, the defendant: (1) must prove that the attorney's performance fell below an objective standard of reasonableness so as to deprive him of the right to counsel under the sixth amendment (performance prong); and (2) that this substandard performance resulted in prejudice (prejudice prong). *Strickland v. Washington*, 466 U.S. 668, 687-94, 104 S. Ct. 2052, 2064-68 (1984). To establish the performance prong, the defendant must overcome a strong presumption that, under the circumstances, the challenged action or inaction was sound trial strategy. *People v. Lopez*, 371 Ill. App. 3d 920, 929, 864 N.E.2d 726, 734-35 (2007). Because effective assistance of counsel refers to competent, not perfect, representation, "matters relating to trial strategy are generally immune from claims of ineffective assistance of counsel." *Id.* at 929, 864 N.E.2d at 735. Further, in determining the adequacy of counsel's representation, "a reviewing court will not consider isolated instances of misconduct, but rather the totality of the circumstances." *Id.* To establish prejudice, the defendant must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *People v. King*, 316 Ill. App. 3d 901, 913, 738 N.E.2d 556, 566 (2000). A reasonable probability is one that sufficiently undermines confidence in the outcome. *Id.* The defendant must satisfy both prongs to prevail on his claim of ineffective assistance of counsel. However, a reviewing court may analyze the facts of the case under either prong first, and, if it deems that the standard for that prong is not satisfied, it need not consider the other prong. *People v. Irvine*, 379

Ill. App. 3d 116, 129-30, 882 N.E.2d 1124, 1136-37 (2008).

¶ 48 In the case at bar, the record shows that, at a pre-trial hearing, the trial court offered to give a limiting instruction before and after ASA Pfeiffer's trial testimony, as well as during jury instructions. In response, however, defense counsel stated that "I don't want a limiting instruction" because "there's no nexus here." At the jury instruction conference, defense counsel again advised the trial court that he did not want any limiting instructions to be given to the jury regarding other-crimes evidence.

¶ 49 Based on our review of the record, we find that defense counsel's choice to twice decline the trial court's offer to give the jury a limiting instruction regarding evidence of the Conway trial was clearly trial strategy. Defense counsel suggested that he did not want to bolster the State's theory at trial by highlighting a motive for Willie's killing in June 2005. The defendant cannot overcome the strong presumption that defense counsel's deliberate election to forego limiting instructions was anything but strategic. See generally *People v. Jackson*, 391 Ill. App. 3d 11, 34, 908 N.E.2d 72, 93-94 (2009).

¶ 50 With regard to defense counsel's failure to seek a limiting jury instruction on gang evidence, even if such an instruction had been given, there is no reasonable probability that the result would have been different in light of Eddie's positive identification of the defendant and the defendant's incriminating statements to John. An undesired outcome for the defendant does not necessarily mean that defense counsel was ineffective. Accordingly, we hold that the defendant's ineffective assistance of counsel claim must fail.

¶ 51 We next determine whether comments made by the State during closing argument denied the

defendant a fair trial.

¶ 52 The defendant complains that three statements made by the State during rebuttal argument, individually and cumulatively, deprived him of a fair trial. The defendant claims that the State argued facts not in evidence regarding the conversation between the defendant and Conway during the defendant's jail visit; improperly asked jurors if they could "imagine" how scared Eddie must have felt at the time of the shooting; improperly argued that a "crime" had been committed against Eddie; and improperly attempted to link the defendant's character with that of convicted felon John.

¶ 52 The State counters that the defendant has forfeited review of this issue and the plain error doctrine does not apply in this case. The State argues that each of its complained-of comments in rebuttal closing argument was either fair comment, invited response to defense counsel's closing argument, or both.

¶ 53 The defendant has forfeited review of this issue because he neither objected to the comments at trial nor raised the claim in his motion for a new trial. See *People v. Herron*, 215 Ill. 2d 167, 175, 830 N.E.2d 467, 472-73 (2005) (a defendant who fails to make a timely trial objection or include the issue in a posttrial motion forfeits the review of the issue). However, the plain error doctrine allows a reviewing court to consider unpreserved issues when either: (1) the evidence is close, regardless of the seriousness of the error, so that the jury's guilty verdict may have resulted from the error and not the evidence; or (2) the error is so serious, regardless of the closeness of the evidence, so as to deny the defendant a substantial right. *Id.* at 178-79, 830 N.E.2d at 475; *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007). The first step in a plain error analysis is to determine whether an error occurred at all. *People v. Hudson*, 228 Ill. 2d 181, 191, 886 N.E.2d 964,

971 (2008).

¶ 54 Prosecutors are afforded wide latitude in closing argument. *People v. Anderson*, 407 Ill. App. 3d 662, 677, 944 N.E.2d 359, 373 (2011). "A prosecutor has the right to comment upon the evidence presented and upon reasonable inferences arising from that evidence, even if the inferences are unfavorable to the defendant, and may respond to comments made by defense counsel which clearly invite a response." *Id.* A prosecutor's closing remarks will lead to reversal only if they created substantial prejudice, which occurs when the improper remarks constituted a material factor in the defendant's conviction. *People v. Land*, 2011 IL App (1st) 101048, ¶ 153. In considering a defendant's claims for prosecutorial misconduct, a reviewing court "considers the closing argument in its entirety in order to place the complained of remarks in context." *Anderson*, 407 Ill. App. 3d at 676, 944 N.E.2d at 373. " 'If the jury could have reached a contrary verdict had the improper remarks not been made, or the reviewing court cannot say that the prosecutor's improper remarks did not contribute to the defendant's conviction, a new trial should be granted.' " *Id.*, citing *People v. Wheeler*, 226 Ill. 2d 92, 123, 871 N.E.2d 728, 745 (2007).

¶ 55 During rebuttal argument, the State remarked upon the following:

> "You think as you sit there in those juror chairs, ladies and gentlemen, that visit between [the defendant] and [Conway] on 5/21 of 2005 had no significance? Really? And a scant ten days later this guy is in that parking lot gunning down [Willie]? Come on. Of course it has significance. I never said that [Conway] ordered the shooting of [Willie]. That's a construction by them. I don't know what that

conversation was, but I can tell you what, it had to do with [Willie].

It had to do with the demise of [Willie]."

¶ 56 These remarks are reasonable inferences by the prosecutor based on the trial evidence. A thorough review of closing arguments in this case reveals no misconduct by the prosecutor regarding the allegedly improper inferences highlighted for the jury.

¶ 57 The defendant also challenges the prosecutor's comment in rebuttal argument, where the prosecutor said: "[c]an you imagine how scared [Eddie] must have been?" The defendant argues that this misconduct was compounded by the prosecutor's comments that: "[w]hat happened to [Eddie] itself was a crime," and "I got to just stop talking about it because it just makes me so mad. I can't stop."

¶ 58 Considering the closing argument in its entirety in the context of all the evidence as well as closing argument by defense counsel, we find that these remarks did not amount to error.

¶ 59 Next, the defendant argues that the State improperly attempted to link the defendant's character with that of convicted felon, John. Specifically, the defendant challenges the State's rebuttal comments that John was a "gang banger," a "thug," a drug dealer, "a friend of [the defendant]," and that the defendant "had explained himself to a like-minded criminal." Similar to the other remarks of the prosecutor which form the basis of the defendant's complaint of misconduct, these remarks must be analyzed in context. When analyzed in context, we find that they were made in response to defense counsel's attacks on John's character. It is not a situation in which the State improperly used evidence to persuade the jury that the defendant was a man of bad character. See *e.g.*, *People v. Nwadiei*, 207 Ill. App. 3d 869, 879, 566 N.E.2d 470, 476 (1990). Thus, we find no

misconduct by the State during rebuttal argument. Therefore, the defendant's cumulative error argument must fail. Likewise, we reject the defendant's remaining arguments and decline to speculate on the reasons which motivated the jury to request to see transcripts relating to Eddie's conversations with the police or what circumstances compelled it to engage in "extensive deliberations." Accordingly, we find that the plain error doctrine is inapplicable to reach this forfeited issue.

¶ 60 Finally, we address the issue of whether the trial court committed sentencing errors which would warrant a sentence reduction or a new sentencing hearing. Sentencing decisions are generally reviewed under an abuse of discretion standard. *People v. Brewer*, 2011 WL 2623619, *7. "A sentence will be deemed 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." (Internal citations omitted.) *Id.*

¶ 61 The defendant argues that his sentence was imposed in error because: (1) the trial court improperly considered a factor in aggravation that was inherent in the offense of first-degree murder; (2) the trial court improperly "bifurcated" the sentencing decision with regard to the first-degree murder conviction and the sentencing enhancement that he "personally discharged a firearm that caused death"; (3) the trial court miscalculated the pre-sentence credit to which he was entitled; and (4) the mittimus erroneously reflects two murder convictions.

¶ 62 The State counters that the defendant forfeited review of the first two sentencing arguments because they were not raised in his motion to reconsider sentence. Notwithstanding forfeiture, the State maintains that the defendant's first two sentencing claims have no merit. The State concedes

the arguments made in the defendant's third and fourth sentencing claims.

¶ 63 The defendant has forfeited review of his first and second sentencing claims on appeal because they were not raised in his motion to reconsider sentence. See *People v. Heider*, 231 Ill. 2d 1, 15, 896 N.E.2d 239, 247 (2008). In the defendant's motion to reconsider sentence, he expressly argued that the sentence imposed was excessive. He made no mention of the trial court's improper consideration of an aggravating factor that was inherent in the offense, or of improper bifurcation. Thus, these arguments are forfeited and we may review them only if the defendant sustains his burden of persuasion under the plain error doctrine. *People v. Haley*, 2011 IL App (1st) 093585, ¶¶ 61-62. As discussed, the first step in a plain error analysis is to determine whether an error occurred at all. *Id.* at ¶ 62.

¶ 64 The trial court is given great discretion in determining a sentence within the limits of the statute set by the legislature. *Id.* at ¶ 63. The court's sentencing determination must be based " 'on the particular circumstances of each case, considering such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age.' " *Id.* (quoting *People v. Fern*, 189 Ill. 2d 48, 53, 723 N.E.2d 207, 209 (1999)). "In imposing sentence on a defendant, a trial judge may not consider any fact implicit in the underlying offense for which the defendant was convicted." *Brewer*, 2011 WL 2623619 at *7. However, the trial court may consider "the nature and circumstances of the offense, including the nature and extent of each element of the offense as committed by the defendant." *Id.* There is a strong presumption that a trial court based its sentencing determination on proper legal reasoning. *People v. Gomez*, 2011 IL App (1st) 092185, ¶87. "Where a sentence falls within statutory guidelines, it is presumed to be proper and will be

overturned only on an affirmative showing that it departs from the intent of the law or violates constitutional guidelines." *People v. Hamilton*, 361 Ill. App. 3d 836, 846, 838 N.E.2d 160, 169 (2005).

¶ 65 At sentencing, the trial court considered the defendant's pre-sentence investigative report (PSI report) and factors in aggravation and mitigation. During aggravation, the trial court made the following statements:

> "In aggravation, the defendant's conduct caused or threatened serious harm. It did. It caused death. The defendant has a prior history of delinquency *** [o]r criminal activity. *** This sentence is necessary to deter others from committing the same crime. *** I find it aggravating that the defendant made numerous attempts to drive or scare the witness in this case. I find that to be extremely aggravating."

The trial court further found that none of the statutory factors in mitigation was applicable, but considered several other non-statutory mitigating factors–such as the defendant's earning of a GED and letters written by the defendant's family members which highlighted his good character.

¶ 66 The defendant contends that the trial court, by stating that "the defendant's conduct caused or threatened serious harm. It did. It caused death," had improperly considered a factor in aggravation that was inherent in the offense of first-degree murder.

¶ 67 Based on our review of the record, the trial court did not emphasize a factor inherent in the offense of first-degree murder in sentencing the defendant. In *Brewer*, this court found that the trial

court's comments during sentencing for first-degree murder that "the defendant's conduct did cause or threaten serious harm, the ultimate serious harm, murder" were not improper. *Brewer*, 2011 WL 2623619 at *8. Rather, the *Brewer* court found that "the fact that his conduct threatened or caused serious harm is not a factor inherent in the crime itself but is a proper aggravating factor to be considered during sentencing even in cases where serious bodily harm is implicit in the offense." *Id.* The trial court comments in this case are similar to *Brewer*. The trial court properly considered the brutality of the defendant's actions in chasing Willie and repeatedly shooting him "in full view of the neighborhood" and without any fear of committing this crime in broad daylight. See *Haley*, 2011 IL App (1st) 093585, ¶69. Further, we find that the trial court considered many factors in determining the defendant's sentence. The transcript of the trial court's ruling shows that it specifically referred to the PSI report, while also considering factors in aggravation. The court determined that none of the statutory mitigating factors applied, but considered non-statutory mitigating factors. The court also commented upon the defendant's lack of remorse. The defendant's sentence was well within the statutory sentencing range for first-degree murder. See *Brewer*, 2011 WL 2623619 at *8; see also *Haley*, 2011 IL App (1st) 093585, ¶72. Thus, we find that the trial court did not err in imposing sentence.

¶ 68 The defendant next argues that his sentence was improperly imposed because the trial court improperly "bifurcated" the sentencing decision with regard to the first-degree murder conviction and the sentencing enhancement that he "personally discharged a firearm that caused death." Specifically, he contends that the trial court failed to consider the cumulative impact that the two sentences, which totaled 75 years of imprisonment, would have upon the defendant.

¶ 69 In sentencing the defendant, the trial court stated that it "must impose two sentences here; the one on first[-]degree murder, the minimum being 20 and the maximum being 60. After taking all the factors in aggravation and mitigation into account, the defendant is sentenced to 45 years on the offense of first[-]degree murder." The trial court further sentenced the defendant to "30 years for the enhancement that he personally discharged a firearm that proximately caused death."

¶ 70 Section 5-4.5-20 of the Code of Corrections (the Code) provides that the sentencing range for the offense of first-degree murder is 20 to 60 years of imprisonment. 730 ILCS 5/5-4.5-20 (West 2010). Section 5-8-1 of the Code states that a sentence enhancement of "25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court" if, during the commission of first-degree murder, the offender personally discharged a firearm that proximately caused death to another person. 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2010). The legislative purpose for enacting sentence enhancements is to "deter the use of firearms in the commission of a felony offense." 720 ILCS 5/33A-1(b)(1) (West 2010); see *People v. Evans*, 373 Ill. App. 3d 948, 969, 869 N.E.2d 920, 939 (2007); *People v. Thompson*, 354 Ill. App. 3d 579, 593, 821 N.E.2d 664, 676 (2004).

¶ 71 The 45-year sentence imposed for the defendant's conviction for first-degree murder and the 30-year sentence enhancement imposed for his personal discharge of a firearm that proximately caused Willie's death fell squarely within the statutory sentencing ranges pursuant to sections 5-4.5-20 and 5-8-1 of the Code. *Hamilton*, 361 Ill. App. 3d at 846, 838 N.E.2d at 169 ("[w]here a sentence falls within statutory guidelines, it is presumed to be proper and will be overturned only on an affirmative showing that it departs from the intent of the law or violates constitutional guidelines").

Our supreme court in *People v. Hill*, 199 Ill. 2d 440, 447, 771 N.E.2d 374, 378 (2002), *overruled in part on other grounds*, *People v. Sharpe*, 216 Ill. 2d 481, 839 N.E.2d 492 (2005), stated the following in rejecting the defendant's contention that a sentence enhancement applicable to a home invasion statute usurped the judiciary's power to consider aggravating and mitigating factors:

> "[s]ection 12-11's 15-year mandatory add-on sentence essentially raises the original sentencing range of 6 to 30 years to a range of 21 to 45 years. Thus, the [trial] court retains the ability to consider aggravating and mitigating factors. Unquestionably, the legislature could have simply chosen to increase directly the original sentencing range to 21 to 45 years instead of implementing the add-on scheme. We find no substantive difference between that scenario and the legislature's decision to impose the mandatory add-on sentence." *Hill*, 199 Ill. 2d at 447, 771 N.E.2d at 378.

¶ 72 Applying the same principles to the offense at bar, we find that the mandatory sentence enhancement for the defendant's personal discharge of a firearm that caused death, pursuant to section 5-8-1 of the Code, raised the original sentencing range for first-degree murder from 20 to 60 years to a range of 45 years to natural life. See 730 ILCS 5/5-8-1 (West 2010). While undoubtably, as the *Hill* court announced, the legislature could have chosen to directly increase the original sentencing for first-degree murder instead of implementing a sentence enhancement scheme, either scenario allows the trial court to impose a sentence between 45 years and a term of natural life. Here, the trial court imposed a sentence of 45 years for first-degree murder plus 30 years "for the

enhancement that he personally discharged a firearm that caused death," for a total of 75 years of imprisonment. The sentence imposed is well within the allowable statutory range. The defendant's contention that the trial court improperly "bifurcated" his sentence is without foundation. We also reject the defendant's contention that the trial court failed to consider the cumulative impact of these two sentences. The defendant appears to argue that because the trial court failed to explicitly mention the total sum of 75 years at the sentencing hearing, the trial court did not consider the cumulative impact of the sentence. We reject this contention. No error occurred and the plain error doctrine does not apply to reach this forfeited issue.

¶ 73 The defendant next argues, and the State concedes, that the trial court erroneously awarded 1,499 days of presentence credit when he was entitled to 1,546 days of credit. Our review of the record confirms this to be true. Therefore, we order the mittimus corrected to reflect a total of 1,546 days of presentence credit. See Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967); *People v. Nash*, 2012 IL App (1st) 093233, ¶51 (mittimus corrected to reflect the accurate amount of presentence credit).

¶ 74 Finally, the defendant argues, and the State concedes, that the mittimus should also be amended to reflect only one conviction of first-degree murder, rather than two. The mittimus currently shows two convictions for first-degree murder–intentional or knowing murder (count 5) (720 ILCS 5/9-1(a)(1) (West 2010)) and "strong probability" murder (count 6) (720 ILCS 5/9-1(a)(2) (West 2010)). Under the one-act, one-crime rule, multiple convictions carved from the same physical act are prohibited. See *People v. King*, 66 Ill. 2d 551, 566, 363 N.E.2d 838, 844 (1977); *People v. Rodriguez*, 336 Ill. App. 3d 1, 13, 782 N.E.2d 718, 727-28 (2002) (where multiple convictions for murder are obtained for offenses arising out of a single act, only the conviction and

sentence for the most serious murder charge will be upheld). Thus, the conviction for intentional or knowing murder (count 5) shall stand, and the conviction for the less serious charge of "strong probability" murder (court 6) shall be vacated. We order that the mittimus be corrected to reflect the conviction and sentence for intentional or knowing murder (counts 5), but vacate the conviction and sentence for "strong probability" murder (count 6). Additionally, we order the mittimus corrected to include a consecutive 30-year sentence enhancement for the personal discharge of a firearm that proximately caused Willie's death.

¶ 75 For the foregoing reasons, we: (1) affirm the defendant's conviction and 45-year sentence for intentional or knowing first-degree murder (count 5); (2) vacate the conviction and sentence for "strong probability" murder (count 6); (3) order the mittimus corrected to reflect only the defendant's conviction and 45-year sentence for intentional or knowing first-degree murder (count 5), and a consecutive 30-year sentence enhancement for "personally discharging a firearm that proximately caused death"; and (4) order the mittimus corrected to reflect a total of 1,546 days of presentence credit. See *People v. Hill*, 402 Ill. App. 3d 920, 929, 932 N.E.2d 173, 182 (2010) (a reviewing court may correct the mittimus without remanding the cause to the trial court).

¶ 76 Affirmed in part and vacated in part; mittimus corrected.