

SIXTH DIVISION
December 20, 2013

No. 1-11-1149

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

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court
Plaintiff-Appellee,)	of Cook County
)	
v.)	No. 04 CR 11244
)	
NICKOLAS SANTOS,)	Honorable
)	Domenica A. Stephenson,
Defendant-Appellant.)	Judge Presiding.

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

ORDER

¶ 1 *Held:* Following the defendant's conviction for murder and attempted murder, the appellate court ruled: (1) the trial judge did not err in denying the defendant's motion to suppress statements; (2) the sentence imposed was not excessive; and (3) the automatic transfer provision of the Juvenile Court Act of 1987 was constitutional.

¶ 2 Following a jury trial in the circuit court of Cook County, defendant Nickolas Santos (Santos) was found guilty of first degree murder (720 ILCS 5/9-1(a)(2) (West 2004)), attempted murder (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2004)) and aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(3) (West 2004)). The jury also found Santos personally discharged the firearm proximately causing death to another person. The trial court subsequently merged the charges of

attempted murder and aggravated discharge of a firearm. The trial court sentenced Santos to 45 years in prison for murder, with a 25-year enhancement for personally discharging the firearm proximately causing death to another person (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2004)). The trial court also imposed a 10-year sentence for attempted murder, to be served consecutively to the murder sentence.

¶ 3 Santos now appeals, arguing: (1) the trial court erred in denying his motion to suppress his statements; (2) his sentence for murder should be reduced because the cumulative 70-year sentence was excessive where he was 15 years old at the time of the offense and lacked a juvenile or criminal record; and (3) the automatic transfer provision of the Juvenile Court Act of 1987 (Juvenile Court Act) (automatic transfer provision) (705 ILCS 405/5-130 (West 2004)) is unconstitutional. For the following reasons, we affirm the judgment and sentence imposed by the circuit court.

¶ 4 BACKGROUND

¶ 5 The record on appeal discloses the following facts. On April 18, 2004, 15-year-old Santos and his 18-year-old codefendant, Jonathan Pena (Pena), were arrested in connection with the shooting death of Kevin Murphy (Murphy). Santos was prosecuted as an adult pursuant to the automatic transfer provision of the Juvenile Court Act (705 ILCS 405/5-130(1)(a) (West 2004)), 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 2004)).

¶ 6 Motion to Suppress Statements

¶ 7 Following the arraignment, this case was continued on multiple occasions by agreement of the parties.¹ On January 12, 2006, Santos filed a motion to suppress statements. In the motion, Santos alleged he was threatened and abused while in custody. Santos contended he was injured in custody on April 18, 2004, but was not provided medical treatment until the following day. Santos also alleged he was questioned outside the presence of his mother. He further alleged the police did not inform him of his constitutional rights until after he had been fingerprinted and questioned in custody.

¶ 8 Prior to the hearing on the motion, in the Spring of 2006, Santos was examined by two doctors from Forensic Clinical Services. In their reports, both doctors concluded Santos was within the average range of intellectual functioning and could understand his constitutional rights. Neither doctor could opine on whether he understood his rights and knowingly and voluntarily waived them at the time he made his statement, because Santos had made significant educational and developmental progress in the intervening two years between the police interrogation and the doctors' evaluations.

¶ 9 At the hearing on the motion to suppress statements, which commenced on May 2, 2008, Chicago police officer Delmar Jones (Officer Jones) testified that on April 18, 2004, he and his partner responded to a radio call from Chicago police Officer William Grassi of shots being fired

¹ The record does not disclose the reason for many of these continuances, although at least three transcripts indicate the case was set for status dates regarding pretrial discovery.

and a foot chase "in the vicinity" of the 1300 block of Maplewood Avenue. Officer Jones and his partner attempted to ascertain Officer Grassi's whereabouts and proceeded in that direction.

Officer Jones observed Santos and Pena in a foot chase near the 1300 block of Maplewood Avenue and arrested and handcuffed Santos at approximately 11:30 p.m. Officer Jones searched Santos and the area around him for weapons, but did not find a handgun. According to Officer Jones, Officer Grassi identified Santos as the person who fired a weapon at him.

¶ 10 Officer Jones denied striking or kicking Santos and never observed any officer threaten or strike Santos. Officer Jones testified that when he transported Santos to the police station, it appeared that Santos may have sustained a cut on his hand, but it appeared to Officer Jones to be a minor cut not requiring medical attention. According to Officer Jones, when the police were initially processing Santos, he informed them he was 17 years old.

¶ 11 Chicago police officer Zelideth Moore (Officer Moore) testified she assisted in the arrest. Officer Moore did not observe Officer Jones abuse Santos nor notice any injury to Santos.

¶ 12 Chicago police detective Tracy Fanning (Detective Fanning) testified he was assigned to investigate the Murphy shooting and attempted murder of Officer Grassi at approximately 12:45 a.m. on April 19, 2004. Detective Fanning first met Santos in an interview room at the Area 5 police station at approximately 2:30 a.m. Detective Fanning testified he informed Santos of his constitutional rights and inquired whether Santos understood them. According to Detective Fanning, Santos replied he understood his rights and was willing to answer police questions.

¶ 13 Detective Fanning also testified Santos represented he was 17 years old. Detective Fanning conducted a computer search regarding Santos, but was unable to locate anyone with

that name and birth date. Detective Fanning later received a telephone call from Santos's uncle, who advised him Santos was only 15 years old. Detective Fanning informed the uncle Santos needed a responsible adult to represent him during the next police interview. Subsequently, Santos's mother, Anna Reyes (Anna), arrived at the police station and confirmed Santos was 15 years old. Detective Fanning then contacted Chicago police detective Charity Musial (Detective Musial), who also served as a youth investigator.

¶ 14 At approximately 6:10 a.m., Detective Fanning conducted a second interview with Santos, at which Anna, Detective Musial and Detective Day were present. Detective Fanning again informed Santos of his constitutional rights; Santos again replied he understood his rights and agreed to speak to Detective Fanning. This interview lasted approximately 10 to 15 minutes.

¶ 15 Detective Fanning further testified he was present during a third police interview of Santos, which occurred at approximately 10 a.m. Anna, Detective Musial and assistant State's Attorney (ASA) Williams were also present. During this interview, which lasted approximately 20 minutes, ASA Williams advised Santos of his constitutional rights and added he would be charged as an adult.

¶ 16 According to Detective Fanning, there was a fourth interview of Santos conducted at approximately 12:30 p.m. Detective Fanning, Anna, Detective Musial, and ASA Williams were present for this interview, which lasted a few minutes.

¶ 17 Detective Fanning was present for a fifth interview of Santos, conducted at approximately 11 p.m. Anna, Detectives Musial and Day, and ASA Dan Tiernan were also present for this interview. ASA Tiernan informed Santos he was not Santos's lawyer and again advised Santos

of his constitutional rights. In this interview, lasting approximately 20 minutes, ASA Tiernan again informed Santos he would be charged as an adult.

¶ 18 Detective Fanning additionally testified that neither he nor Detective Day in his presence threatened Santos. According to Detective Fanning, Santos did not report being kicked, punched or struck with an object shortly after the arrest. Detective Fanning had no difficulty communicating with Santos.

¶ 19 On cross-examination, Detective Fanning acknowledged he did not know when Anna first arrived at the police station or whether she requested to see Santos prior to 6 a.m. Detective Fanning did not believe Anna was allowed to sit with Santos when he was not being interviewed. Detective Fanning also acknowledged Santos had no private conversations with Anna or Detective Musial. According to Detective Fanning, Detective Musial never advised Santos to remain silent or speak with an attorney. Detective Fanning did not recall being notified Santos's father had arrived at the police station or that the father remained at the police station when Anna returned home. Detective Fanning did not document whether Santos was provided the opportunity to use the restroom between interviews, and did not know whether Santos slept between interviews.

¶ 20 ASA Williams testified regarding his interviews with Santos in a manner generally consistent with Detective Manning's testimony. ASA Williams, however, testified he did not readvise Santos of his constitutional rights during the 12:30 p.m. interview, although he did remind Santos of his rights during the conversation, which lasted "a couple of minutes."

According to ASA Williams, Santos was calm and cooperative during the interviews and did not

seem fearful or agitated. ASA Williams acknowledged he did not undertake to explain Santos's constitutional rights to him. ASA Williams further testified he did not observe the youth officer speak to Santos. ASA Williams did not recall speaking to Anna.

¶ 21 Detective Musial testified she was classified as a youth investigator at the time of the incident. On April 19, 2004, shortly before 6 a.m., Detective Musial was contacted by other detectives regarding a juvenile in custody. Detective Musial proceeded to the police station and met Santos in an interview room where Anna and Detectives Fanning and Day were present. According to Detective Musial, her role was to answer any questions Santos or Anna might have to protect Santos's rights. Detective Musial informed Santos of his constitutional rights and inquired whether he understood them, but did not ask Anna whether she understood them. Detective Musial also informed Santos he might be charged as an adult. She then observed the ensuing police interview of Santos.

¶ 22 Detective Musial was also present for the interview conducted by ASA Williams at 10 a.m., but did not participate in the interview. Detective Musial further observed the 12:30 p.m. interview.

¶ 23 Shortly after 1 p.m., Detective Musial was informed Santos had an injury on his hand. Detective Musial spoke to Santos, who indicated he injured his hand while the police were chasing him. Detective Musial requested Santos be transported to the hospital for treatment. According to Detective Musial, Santos was transported to the hospital and later returned to the police station, but she did not accompany him to the hospital or speak with him upon his return.

¶ 24 Detective Musial further testified Anna left the police station after Santos was transported to the hospital. The police contacted Anna regarding returning to the police station when ASA Tiernan returned to interview Santos. At approximately 10:45 p.m., Detective Musial met with Santos, Anna, Detectives Fanning and Day, and ASA Tiernan in an interview room. ASA Tiernan again advised Santos of his constitutional rights and the possibility of being charged as an adult. At the conclusion of the interview, ASA Tiernan informed Santos regarding options for memorializing his statement. According to Detective Musial, Santos initially agreed to provide a videotaped statement, but Anna objected. Detective Musial inquired whether Anna wanted to consult with Santos. When Anna responded she wanted to consult with Santos, everyone else left the interview room. Upon everyone's return to the interview room, Santos stated he did not want his statement videotaped and no further interviews were conducted.

¶ 25 On cross-examination, Detective Musial acknowledged she never privately conferred with Santos or Anna. Detective Musial also testified she was not involved with providing food, drinks or washroom access for Santos. Detective Musial did not remember Santos's father arriving at the station, adding she never went to the lobby of the police station. On redirect examination, Detective Musial testified Anna was allowed to remain in the interview room with Santos after the police interviews, but she did not know how long Anna remained or who allowed Anna in and out of the interview room. Detective Musial believed Anna remained with Santos, but she could not recall whether Anna followed the police and ASAs out of the interview room.

¶ 26 Anna testified that in April 2004, she resided with her three sons. At some time between midnight and 6 a.m., she and her son Noel accompanied police officers to the police station.

According to Anna, she waited for over one hour at the police station before police accompanied her to the room where Santos was being held. Anna did not remember any of the police officers informing Santos of his constitutional rights. Anna also testified the female police officer present never explained the constitutional rights to her. Anna had never been arrested and in 2004 was not aware of what were *Miranda* warnings. Anna further testified she was not allowed to speak to Santos privately during this first interview.

¶ 27 According to Anna, at some point during the afternoon, the police informed her and Noel it was time to leave and transported them back to their home. Luis Santos (Luis), Santos's father and Anna's ex-husband, remained in the waiting area at the police station.

¶ 28 Anna additionally testified police returned her to the police station later in the evening. Anna went to a room where police officers were present, one of whom was informing Santos of his constitutional rights. After the final interview, Santos agreed to provide a videotaped statement, to which Anna objected. Anna conversed with Santos privately and advised him to refuse providing a videotaped statement.

¶ 29 Anna testified Santos had no prior arrests and had never been to a police station. Anna knew nothing about obtaining legal counsel and did not know Santos had a right to counsel during police questioning. Anna added she left high school during her freshman year and worked as a housekeeping supervisor at O'Hare airport. On cross-examination, Anna testified she did not stay with Santos after his police interviews, nor did she request to remain with him.

¶ 30 Luis testified he was notified of Santos's arrest by Noel before 6 a.m. on April 19, 2004. When Luis arrived at the police station, he informed a female youth officer he was Santos's father, but a different police officer declined his request to see Santos. Although Luis requested to accompany Anna to the interview room, he was informed only one parent was necessary. The police also notified Luis that Anna was the only parent who could attend the interviews because Luis was not residing with Anna.

¶ 31 Luis testified he remained in the lobby of the police station after Anna and Noel departed. According to Luis, he made multiple requests to meet with Santos, but was refused and was also informed that the detectives were unavailable to speak with him. Luis further testified he went to a nearby McDonald's restaurant after the police threatened to charge him with trespassing. When Luis returned to the police station from the McDonald's, Anna was not present and police informed him Santos had been charged with murder and attempted murder.

¶ 32 ASA Tiernan testified that on April 19, 2004, he met with Santos at approximately 10:50 p.m. Anna, a youth officer, and Detectives Fanning and Day were also present. ASA Tiernan explained to Santos he was a prosecutor, informed Santos of his constitutional rights and notified Santos he would be charged as an adult. According to ASA Tiernan, Santos indicated he understood and agreed to answer ASA Tiernan's questions. At the conclusion of the interview, ASA Tiernan provided Santos with options for memorializing a statement. Santos initially agreed to provide a videotaped statement, but declined to do so following a private conversation with Anna.

¶ 33 On June 3, 2009, at the conclusion of the hearing, the trial court denied the motion to suppress statements, based on a totality of the circumstances. In particular, the trial court noted Anna was present during questioning and the youth officer, "if nothing else," ensured Santos received medical treatment for his hand injury. The trial court also reasoned the respites in questioning were important. The trial court concluded Luis was not required to be present for the questioning. The trial court further found the State's witnesses had a better recollection of the details regarding the *Miranda* warnings and when Anna was present.

¶ 34 Trial

¶ 35 Santos and codefendant Pena were tried simultaneously by separate juries. Murphy's mother, Sabina Smith (Smith), testified that on April 18, 2004, she observed Murphy at approximately 11:15 p.m. and he was alive and healthy. When Smith next observed Murphy, at approximately 11:30 or 11:35 p.m., Murphy had been shot. Murphy died from injuries sustained in the shooting.

¶ 36 Tessa Ward (Ward) testified that on the evening of the shooting, she was at her residence at 1254 North Artesian Avenue in Chicago, Illinois. Ward had known Murphy for years. At approximately 11:30 p.m., she heard Murphy arguing with his girlfriend and went to her bedroom window to observe what was taking place. Ward noticed Santos and Pena approach Murphy as the girlfriend departed. Ward then moved to observe the scene from her daughter's bedroom window. Ward testified she had a clear view of all three individuals. Ward observed Pena produce a weapon and point it at Murphy. Santos then produced a silver handgun from his pocket and shot Murphy twice. After Murphy collapsed to the ground, Santos and Pena ran from

the scene. Ward telephoned the police, then ran downstairs to assist Murphy. Ward did not speak to police when they arrived, but she contacted the police the following day. Ward proceeded to the police station, where she identified Santos in a physical lineup and Pena from a photographic array.

¶ 37 Dr. Adrienne Segovia, a forensic pathologist, testified she performed Murphy's autopsy. Dr. Segovia opined Murphy died as the result of multiple gunshot wounds and the manner of death was homicide.

¶ 38 Chicago police sergeant William Grassi testified that on April 18, 2004, he and his partner were conducting a narcotics investigation, during which he concealed himself in a gangway at 1319 North Campbell Avenue. At approximately 11:30 p.m., he observed Santos and Pena run southbound through the alley. Sergeant Grassi was curious because he was in Spanish Cobra gang territory, about one-half block from Maniac Campbell Avenue Boys territory, and the rival gangs were at war at the time.

¶ 39 Santos and Pena had already exited the alley when Sergeant Grassi reached the alley. Sergeant Grassi continued in the same direction as Santos and Pena when he heard at least two gunshots coming from the direction of the corner of Artesian Avenue and Potomac Avenue. Sergeant Grassi was moving southward through the alley when Santos and Pena reentered the alley, running northward. According to Sergeant Grassi, Santos and Pena were carrying weapons. Sergeant Grassi announced he was a police officer and directed Santos and Pena to drop their weapons. Santos fired his handgun once at Sergeant Grassi; Pena fired at Sergeant

Grassi three times. Sergeant Grassi returned fire, whereupon Santos and Pena turned around, ran southward out of the alley, turning westward on Potomac Avenue.

¶ 40 Sergeant Grassi testified he gave chase and radioed for police backup. According to Sergeant Grassi, Santos and Pena continued westward until they reached an alley between Campbell Avenue and Maplewood Avenue. Pena ran northward into the alley, while Santos continued westward on Potomac Avenue. Sergeant Grassi followed Pena and observed him throw a black object toward a garage at Maplewood Avenue and Potomac Avenue, but a police search conducted later failed to recover a weapon. Pena turned down a gangway at 1315 Maplewood Avenue and ran northward on Maplewood Avenue, where Pena and Santos were reunited.

¶ 41 According to Sergeant Grassi, he was joined by two police officers on Maplewood Avenue, where Santos and Pena had crouched behind a parked, silver Grand Am. Santos attempted to run eastward, but fell and was taken into custody. Pena then attempted to flee, again pointing a weapon at Sergeant Grassi. Pena was apprehended after another short chase.

¶ 42 Connie Cash (Cash), who lived at 1321 North Maplewood Avenue on the night in question, testified she heard gunshots at approximately 11:35 p.m., and observed two men running, one of whom was carrying a handgun. Cash never identified the individuals she observed that evening.

¶ 43 Robert Tovar (Tovar), a forensic investigator for the Chicago Police Department, recovered discharged 9mm and .45-caliber bullet cartridges from the route of the chase and

recovered a 9 mm automatic pistol from under a gray Pontiac at 1346 North Maplewood Avenue.

Tovar subsequently conducted a gunshot residue test on Santos.

¶ 44 Illinois State Police forensic scientist Brian Mayland testified the discharged 9mm cartridges, as well as a bullet taken from Murphy's body, were all fired by the automatic pistol recovered from under the gray Pontiac. The recovered .45-caliber cartridges were all fired by Sergeant Grassi's firearm. Illinois State Police forensic scientist Anastasia Petruncio examined the automatic pistol and magazine for fingerprints, opining the recovered fingerprints matched Pena, not Santos.

¶ 45 Detective Fanning testified consistently with his testimony at the hearing on the motion to suppress statements. Detective Fanning also testified that during the 2:30 a.m. interview, Santos indicated he and Pena were walking in Cobra territory, with Pena walking a few steps ahead, when he heard gunshots. Santos looked over and observed Pena in a shooting position. He and Pena then ran down Maplewood Avenue and were arrested shortly thereafter.

¶ 46 According to Detective Fanning, during the 6 a.m. interview, Santos stated he had "hooked up with" Pena, who came out of his house carrying a silver handgun. According to Santos, Pena said, "let's go get somebody," which meant Pena wanted to shoot a rival gang member. They went to the corner of Artesian Avenue and Potomac Avenue, where an individual Santos identified as Murphy was sitting on a porch. Santos stated to Detective Fanning that Murphy said "Cobra folk," or "what up folk," to which Pena responded "Cobra killer" and shot Murphy. Pena then moved closer to Murphy and fired twice. After the shooting, Santos and Pena ran down an alley and encountered a police officer. Santos informed Detective Fanning

that Pena and the police officer exchanged gunfire. Santos and Pena then ran to Maplewood Avenue, where they were apprehended. Detective Fanning also testified Santos gave a similar account during the 10 a.m. interview.

¶ 47 During the evening of April 19, 2004, Detective Fanning learned Ward had been transported to the police station and interviewed. Detective Fanning assembled a lineup, from which Ward identified Santos as the person she observed shoot Murphy.

¶ 48 ASA Tiernan testified regarding the 10:50 p.m. interview with Santos. According to ASA Tiernan, Santos initially stated Pena shot Murphy and fired at the police. ASA Tiernan informed Santos he was identified as the shooter. Santos then stated he had been at Pena's house when Pena exited the house and said "let's go get some Cobras." According to Santos, Pena was a member of the Manic Campbell Avenue Boys street gang, but Santos denied being a gang member.

¶ 49 ASA Tiernan also testified Santos stated he and Pena walked over to Artesian Avenue and Potomac Avenue, where they observed a male sitting on a porch. Santos requested Pena provide him the handgun, because he wanted to prove he was tough. Pena provided the weapon to Santos. Then words were exchanged between Santos and the individual before Santos shot the individual at least twice. Santos and Pena then fled into the alley, where they encountered the police officer. Santos fired once toward the officer before fleeing. The police apprehended him shortly thereafter.

¶ 50 At the conclusion of the interview, ASA Tiernan informed Santos he could memorialize his statement by a handwritten statement, court-reported statement, or videotaped statement.

Although Santos responded he would provide a videotaped statement, he declined to provide a statement following a private conversation with Anna.

¶ 51 Santos rested his case without presenting evidence on his behalf. Following closing argument and jury instructions, the jury deliberated and found Santos guilty of first degree murder, attempted murder and aggravated discharge of a firearm. The jury also found Santos personally discharged the firearm proximately causing Murphy's death.

¶ 52 Posttrial Proceedings

¶ 53 On January 7, 2011, Santos filed a posttrial motion for a new trial, which Santos subsequently amended. On February 22, 2011, the trial court denied the posttrial motion and proceeded to a sentencing hearing. Following argument from counsel for both sides, including argument based on the presentencing investigation, the trial judge initially stated she considered all of the factors in aggravation and mitigation of the offense, the argument of counsel, and Santos's statement in allocution. The trial judge specifically noted Santos was "barely 15" and associating with someone several years older at the time of the shooting. The trial judge observed Santos had a good family and no reason to associate with gang members, request a handgun and shoot an unknowing, unarmed stranger on the street. Having considered Santos was associating with someone several years older, the trial judge nevertheless concluded Santos was of an age where the decisions to shoot Murphy and shoot at a police officer were his own. The trial judge sentenced Santos to 45 years in prison, with a 25-year enhancement for personally discharging the firearm proximately causing death to another person. The trial court also imposed a 10-year sentence for attempted murder, to be served consecutively with the murder

sentence. In addition, the trial court merged the charges of attempted murder and aggravated discharge of a firearm. On March 24, 2011, Santos filed a motion to reconsider the sentence. As subsequently amended, Santos asserted his sentence was cruel and unusual punishment, given his age and lack of a criminal record. Santos argued his sentence was tantamount to a life sentence without parole and cited *Roper v. Simmons*, 543 U.S. 551 (2005), in support of his claim. On April 12, 2011, the trial judge denied the motion to reconsider the sentence, again observing she had considered all of the factors in aggravation and mitigation of the offense, including Santos's age, and imposed a sentence appropriate for the nature of the crime. Santos filed a notice of appeal to this court the same day.

¶ 54

DISCUSSION

¶ 55 On appeal, Santos argues: (1) the trial court erred in denying his motion to suppress his statements; (2) his sentence for murder should be reduced because the cumulative 70-year sentence was excessive where he was 15 years old at the time of the offense and lacked a juvenile or criminal record; and (3) the automatic transfer provision of the Juvenile Court Act (705 ILCS 405/5-130 (West 2004)) is unconstitutional. We address these arguments in turn.

¶ 56

I. The Motion to Suppress Statements

¶ 57 Santos first argues the trial court erred in denying his motion to suppress statements because he was 15 years old, detained for 23 hours, interrogated repeatedly and denied any opportunity to consult with a concerned adult.² Receiving a confession from a juvenile is "a

² In his brief, Santos "does not contend that the confessions were coerced through abuse,

sensitive concern." *People v. Prude*, 66 Ill. 2d 470, 476 (1977); see *People v. Murdock*, 2012 IL 112362, ¶ 32; see also *Haley v. Ohio*, 332 U.S. 596, 599-601 (1948) (commenting on why the propriety of interrogation methods may depend on whether the interrogated individual was a juvenile or an adult). As the United States Supreme Court has stated:

"If counsel was not present for some permissible reason when an admission [from a juvenile] was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair." *In re Gault*, 387 U.S. 1, 55(1967); see *Murdock*, 2012 IL 112362, ¶ 32.

When determining whether a juvenile's confession was voluntarily given, relevant circumstances include: (1) the juvenile's age, intelligence, background, experience, education, mental capacity, and physical condition at the time of questioning; (2) the duration of the detention, including whether the police physically or mentally abused the juvenile or employed trickery or deceit in obtaining the confession; and (3) whether the juvenile had an opportunity to speak with a parent or other concerned adult prior to or during the interrogation, including whether the police prevented or frustrated such opportunities. *Murdock*, 2012 IL 112362, ¶¶ 30, 32, 45. No single factor is dispositive; rather, courts must consider the totality of the circumstances surrounding the confession. *Murdock*, 2012 IL 112362, ¶ 30.

or that inappropriate threats or promises were made to him."

¶ 58 "Review of a circuit court's ruling on a motion to suppress presents both questions of law and fact." *People v. Richardson*, 234 Ill. 2d 233, 251 (2009). When faced with a challenge to a circuit court's ruling on the voluntariness of a confession, a reviewing court will not disturb the circuit court's factual findings unless they are against the manifest weight of the evidence.

Murdock, 2012 IL 112362, ¶ 29. "This deferential standard of review is grounded in the reality that the circuit court is in a superior position to determine and weigh the credibility of the witnesses, observe the witnesses' demeanor, and resolve conflicts in their testimony."

Richardson, 234 Ill. 2d at 251. This court, however, reviews the court's ultimate ruling on whether a confession was voluntary under the *de novo* standard. *Murdock*, 2012 IL 112362, ¶ 29. In reviewing the trial court's ruling, a reviewing court may consider the entire record. *People v. Gilliam*, 172 Ill. 2d 484, 501 (1996).

¶ 59 Where a defendant challenges the admissibility of an inculpatory statement through a motion to suppress, the State bears the burden of proving the statement was voluntary. 725 ILCS 5/114-11(d) (West 2004). "The State carries the initial burden of making a *prima facie* case that the statement was voluntary. Once the State makes its *prima facie* case, the burden shifts to the defense to produce some evidence that the confession was involuntary [citation], and the burden reverts to the State only upon such production by the defense." *Richardson*, 234 Ill. 2d at 254.

¶ 60 In this case, the trial judge found the State's witnesses more credible than the defense witnesses. Santos does not otherwise challenge the trial judge's factual findings. Instead, Santos maintains the relevant circumstances require this court to conclude his statements were involuntary. We now turn to consider those circumstances.

¶ 61 A. The Defendant's Personal Characteristics

¶ 62 Santos was 15 years old, which is generally an impressionable age that is a significant factor to consider with regard to the circumstances surrounding his confession. See, e.g., *Haley*, 332 U.S. at 599-600; *People v. Griffin*, 327 Ill. App. 3d 538, 549 (2002). Santos had no prior experience with the criminal justice system, suggesting he was not sophisticated enough to protect his rights during a police interrogation without the aid of counsel or a concerned parent. *People v. McDaniel*, 326 Ill. App. 3d 771, 782 (2001). Santos, however, had completed the eighth grade and was in his first year of high school at the time of the incident. Doctors who examined Santos opined he was in the normal intelligence range, although they could not opine on whether he understood his constitutional rights in 2004. Santos has two parents who exhibited care about his welfare. The police witnesses testified they did not have difficulty communicating with Santos. Santos suffered a hand injury before he was taken into custody, which received medical treatment during his detention.

¶ 63 B. The Circumstances of the Detention and Interrogation

¶ 64 Santos was detained for 23 hours. By statute, the State may detain a juvenile for 24 hours where the offense is a crime of violence. 705 ILCS 405/5-410(2)(c) (West 2004). Murder is a crime of violence. *Id.*; 20 ILCS 301/1-10 (West 2004). Santos was arrested late in the evening, but the duration of the interrogations during his detention were not lengthy. Unlike *Haley*, this is not a case in which a juvenile was "questioned through the dead of the night by relays of police." *Haley*, 332 U.S. at 599-600. Indeed, upon learning Santos misled them about his age, the police ceased questioning until a parent and a youth officer were available to be present for the

questioning. Moreover, during the period of detention, the police transported Santos from the police station to the hospital for a period of time, a fact which the trial judge found was significant when considering the voluntariness of the statements. Anna offered no testimony suggesting Santos was in physical distress. Santos concedes his confessions were not coerced through abuse, inappropriate threats or promises. Indeed, the record indicates Santos did not admit to shooting Murphy until after he was placed in a lineup and was informed by police he had been identified as the shooter.

¶ 65 C. The Opportunity to Confer With a Concerned Adult

¶ 66 Santos did not have an opportunity to speak with a parent or other concerned adult prior to the initial interrogation, but had this opportunity during the subsequent interrogations. See *Murdock*, 2012 IL 112362, ¶ 32. Luis testified the police did not allow him to confer with Santos, while Detective Fanning did not recall being notified Santos's father had arrived at the police station or that the father remained at the police station when Anna returned home. Anna testified she waited for over one hour at the police station before police accompanied her to the room where Santos was being held. Detective Fanning acknowledged he did not know when Anna first arrived at the police station or whether she requested to see Santos prior to 6 a.m. Even assuming for the sake of argument police did not allow Luis to confer with Santos and acknowledging Anna did not confer with Santos prior to the police interrogation, " a juvenile's confession or statement should not be suppressed merely because he was denied the opportunity to confer with a parent or other concerned adult before or during the interrogation." *Murdock*, 2012 IL 112362, ¶ 33. "The concerned adult factor is particularly relevant in situations in which

the juvenile has demonstrated trouble understanding the interrogation process, he asks to speak with a concerned adult, or the police prevent the concerned adult from speaking with him." *Id.*

¶ 67 In this case, Anna was present for the interviews occurring after the police were informed Santos was a juvenile. Detective Musial was also present in her capacity as a youth officer after it was determined Santos was a juvenile. Detective Musial did not interrogate Santos and was present to answer any questions from Anna and Santos. Anna did not conduct a private conversation with Santos until the final interview, but the record does not indicate the police prevented or frustrated opportunities for conversations. Luis may not have been allowed to confer with Santos, but Santos had the opportunity to speak with his custodial parent, and had a youth officer present. Moreover, Santos did not demonstrate trouble understanding the interrogation process.

¶ 68 Regarding the presence of Detective Musial, we note a conflict has arisen in Illinois case law regarding the role of a juvenile officer. *Murdock*, 2012 IL 112362, ¶ 49; *People v. Minniti*, 373 Ill. App. 3d 55, 73 (2007). Some cases have required the juvenile officer only "verify that a juvenile's parents have been notified, ensure that the juvenile has been given *Miranda* rights, and ensure that the juvenile is properly treated, fed, given access to the restroom facilities, and not coerced." *Murdock*, 2012 IL 112362, ¶ 49; *People v. Williams*, 324 Ill. App. 3d 419, 429-30 (2001). Other cases have required the juvenile officer "not merely be present and remain silent, but demonstrate an interest in the minors' welfare and affirmatively protect their rights." *Minniti*, 373 Ill. App. 3d at 73; *People v. McDaniel*, 326 Ill. App. 3d 771, 785 (2001). In *Murdock*, our supreme court acknowledged this conflict but declined to resolve it because its resolution was not

essential to the disposition of the case. *Murdock*, 2012 IL 112362, ¶ 51. This was because the juvenile officer was also the lead investigator in the case; accordingly, our supreme court noted there simply was no juvenile officer present in the room for that defendant's interrogation. *Id.* In contrast, Detective Musial was not an investigator in this case. Furthermore, we need not address the current split in authority for two reasons. First, Santos was able to confer with Anna in addition to Detective Musial. Second, the trial judge did not place much weight on the presence of Detective Musial, observing she "if nothing else" secured medical treatment for Santos.

¶ 69 In sum, Santos was a 15 year old with no prior experience with the criminal justice system, who was detained for 23 hours without conferring with a concerned adult prior to the interrogations. Advised of his *Miranda* rights on several occasions, Santos was of average intelligence, repeatedly indicated he understood his constitutional rights, was not subjected to coercion, threats, promises, or prolonged interrogations, and had the opportunity to confer with his mother during police questioning. A youth officer was also present, obtained medical care for Santos, and ensured Santos and Anna were provided the opportunity to confer regarding his provision of a videotaped statement. Given the totality of the circumstances, we conclude the trial court did not err in denying the motion to suppress statements.

¶ 70

II. Sentencing

¶ 71 Santos next contends his sentence for murder should be reduced because the cumulative 70-year sentence (a 45-year base sentence with a 25-year enhancement) was excessive where he was 15 years old at the time of the offense and lacked a juvenile or criminal record. Under the Unified Code of Corrections, the sentence for first-degree murder is not less than 20 years and

not more than 60 years. 730 ILCS 5/5-8-1(a) (West 2004). The trial judge also imposed a 25-year sentencing enhancement for personally discharging the firearm that proximately caused Murphy's death. "[I]f, during the commission of the offense, the person 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 2004). The trial judge further imposed a 10-year sentence for attempted murder. 720 ILCS 5/8-4(c), 9-1(a)(1) (West 2004). Attempted murder is usually subject to a sentencing range of 6 to 30 years' imprisonment. 730 ILCS 5/5-8-1(a) (3) (West 2004). Santos does not challenge the murder sentencing enhancement or his sentence for attempted murder, but contends his base sentence for murder should be reduced based on the cumulative length of his murder sentence. Santos initially asked this court to reduce his sentence but now requests this court remand his case for resentencing.

¶ 72 The trial court has broad discretionary powers to fashion an appropriate sentence within the statutory limits prescribed by the legislature. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). The trial court must base its sentencing determination 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.* A reviewing court may not alter a defendant's sentence absent an abuse of discretion by the trial court. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). 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." *Id.*; see also *People v. Stacey*, 193 Ill. 2d 203, 210 (2000) (citing *People v. Fern*, 189

Ill. 2d 48, 54 (1999)). "A reviewing court gives great deference to the trial court's judgment regarding sentencing because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing court, which must rely on the 'cold' record. *Fern*, 189 Ill. 2d at 53; see *Alexander*, 239 Ill. 2d at 212-13.

¶ 73 In considering the propriety of a sentence, the reviewing court must "proceed with great caution and must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently." *Fern*, 189 Ill. 2d at 53; see *Alexander*, 239 Ill. 2d at 213. "[I]t is not our duty to reweigh the factors involved in [the trial court's] sentencing decision." *Alexander*, 239 Ill. 2d at 214. Moreover, " '[a] defendant's rehabilitative potential *** is not entitled to greater weight than the seriousness of the offense.' " *Id.* (quoting *People v. Coleman*, 166 Ill. 2d 247, 261 (1995)); see *People v. Hopkins*, 363 Ill. App. 3d 971, 988 (2005). It is presumed the trial court properly considered all mitigating factors and rehabilitative potential presented, and the burden is on the defendant to affirmatively prove otherwise. *People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010). The seriousness of the crime is the most important factor in determining an appropriate sentence, not the presence of mitigating factors such as the lack of a prior record, and the absence of aggravating factors does not require the minimum sentence be imposed. *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002).

¶ 74 Santos contends his cumulative sentence is the functional equivalent of a life sentence and effectively negates any possibility of restoring him to useful citizenship. See Ill. Const. 1970, art. I, § 11; 730 ILCS 5/1-1-2 (West 2004). Santos asserts "[s]uch a sentence flies in the face of a growing national consensus that sentences tantamount to natural life are inappropriate

for defendants who were teenagers at the time of their offense." Santos relies on case law indicating juveniles have a greater rehabilitative potential than adults. See *Miller v. Alabama*, ___ U.S. ___, ___, 132 S. Ct. 2455, 2465 (2012); *Graham v. Florida*, 560 U.S. 48, ___, 130 S. Ct. 2011, 2027 (2010); *Roper*, 543 U.S. at 570-571; *People v. Miller*, 202 Ill. 2d 328, 342-343 (2002). Santos particularly argues his case should be remanded for resentencing in light of *Miller v. Alabama*, which had not been decided at the time he was sentenced.

¶ 75 *Roper* held the death penalty unconstitutional as applied to juveniles. *Roper* 543 U.S. at 578. This case does not involve capital punishment. *Graham* involved the constitutionality of imposing on juveniles a sentence of life without parole for nonhomicide offenses. *Graham*, 560 U.S. at ___, 130 S. Ct. at 2030. This case involves a homicide. *Miller* involved the constitutionality of imposing on juveniles a sentence of life without parole based on an accountability theory. *Miller*, 202 Ill. 2d at 342-43. Santos was not convicted based on an accountability theory. In *Miller v. Alabama*, the United States Supreme Court held the eighth amendment forbids a sentencing scheme which mandates life in prison without possibility of parole for juvenile offenders, even in homicide cases. *Miller v. Alabama*, ___ U.S. at ___, 132 S. Ct. at 2469. This case does not involve a mandatory life sentence.

¶ 76 Indeed, in *Miller v. Alabama*, the Court expressly declined to consider the "argument that the Eighth Amendment requires a categorical bar on life without parole for juveniles, or at least for those 14 and younger." *Id.* *Miller v. Alabama* expressly does not foreclose a life sentence for a juvenile in a homicide case. *Id.* *Miller v. Alabama* simply requires a sentencing court "to take into account how children are different, and how those differences counsel against irrevocably

sentencing them to a lifetime in prison." *Id.* The Court thus requires "individualized consideration before sentencing a juvenile to life imprisonment without possibility of parole." See *id.* at 2469-70.

¶ 77 In this case, the sentencing court engaged in the individualized consideration contemplated by *Miller v. Alabama*. On this point, it is useful to compare this case to the evils of mandatory life sentences without parole for juveniles identified in *Miller v. Alabama*:

"Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features – among them, immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him – and from which he cannot usually extricate himself – no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. Indeed, it ignores that he might have been charged and convicted of a lesser offense if not for incompetencies associated with youth – for example, his inability to deal with police officers or prosecutors (including on a plea agreement) or his incapacity to assist his own attorneys." *Id.* at 2468.

¶ 78 In this case, the record on appeal indicates the trial court expressly considered Santos's age, both at the sentencing hearing and upon the motion for reconsideration of the sentence, which expressly argued the sentence was tantamount to a life sentence without parole and therefore unconstitutional, citing *Roper*. The record also indicates the trial court, who observed Santos throughout the proceedings in a way an appellate court cannot, was capable of making his

own decisions. The trial court specifically observed Santos had a generally good home environment. Moreover, the trial court had before it a presentencing investigation report in which Santos described his upbringing as good; this point was expressly argued during the sentencing hearing. Indeed, later in the report, Santos claimed he stayed to himself because in his neighborhood, it mattered with whom he associated. The trial court, however, also properly considered the nature of the offenses. The trial judge considered the circumstances of the crime, in which Santos requested the weapon of one street gang member to murder an apparent stranger (and apparent gang member). By Santos's own statement, he accompanied Pena and ultimately shot Murphy for no other reason than wanting to appear "tough." Moreover, in this case, the issue of whether Santos had the ability to deal with police officers and prosecutors was fully litigated in denying Santos's motion to suppress.

¶ 79 Furthermore, this is not a case where Santos might otherwise have been charged and convicted of a lesser offense. To the contrary, as the State notes in its brief, Santos could have been charged with attempted murder of a police officer engaged in his official duties, which carries a sentencing range of 20-80 years, with a 20-year enhancement when the offense is committed with a firearm. See 720 ILCS 5/8-4(c)(1)(A),(C), 9-1(b)(1) (West 2004). The trial court in this case denied the State's request to amend the indictment to reflect this charge prior to trial.

¶ 80 Thus, the record on appeal establishes Santos received the individualized sentencing discussed in *Miller v. Alabama*.³ In addition, we presume the trial court properly considered all mitigating factors and rehabilitative potential presented, as Santos did not affirmatively prove otherwise. *People v. Brazziel*, 406 Ill. App. 3d at 434. Thus, we presume the trial court noted Santos was currently in the prison population, that he was suspended three times from school for

³ Moreover, in his initial brief, Santos argued his sentence is excessive, not unconstitutional. *Miller v. Alabama* was decided after Santos filed his initial brief, but it was cited in his brief as pending before the United States Supreme Court. Santos's initial brief noted in passing "the penalty must satisfy constitutional constrictions" (*Miller*, 202 Ill. 2d at 335), but did not argue his sentence was unconstitutional or how the sentence was unconstitutional. Santos's reply brief merely observes "[n]o Illinois court has yet addressed the question of whether a *de facto* life sentence is unconstitutionally excessive post-*Miller*," before briefly discussing cases from other jurisdictions addressing the issue, and concluding "*Miller* strongly suggests that the trial court *** imposed an excessive, and unconstitutional sentence." An issue not clearly defined and sufficiently presented fails to satisfy the requirements of Supreme Court Rule 341(h)(7) (eff. July 1, 2008) and is therefore forfeited. See *People v. Bui*, 381 Ill. App. 3d 397, 421-22 (2008). Indeed, our supreme court has admonished this court to consider constitutional questions only where the case cannot be determined on other grounds. *People v. White*, 2011 IL 109689, ¶ 148 (and cases cited therein). Thus, we decline to relax the rule of forfeiture in this case.

fighting, that he briefly attended the high school equivalency program while in the Cook County Department of Corrections, and all of the other facts relevant to Santos's rehabilitative potential or lack thereof.

¶ 81 Santos does not dispute his sentence falls within statutory limits. Santos could have received a 60-year base sentence for murder; the trial court also imposed the minimum enhancement for personally discharging the firearm that killed Murphy. The record demonstrates the trial court, which was in a superior position to assess Santos, weighed the relevant sentencing factors and it is not the duty of this court to reweigh them. *Fern*, 189 Ill. 2d at 53; see *Alexander*, 239 Ill. 2d at 213-14. Accordingly, we conclude the trial judge did not abuse her discretion in imposing the sentence in this case.

¶ 82 III. The Constitutionality of the Automatic Transfer Provision

¶ 83 Lastly, Santos challenges the constitutionality of the automatic transfer provision of the Juvenile Court Act (705 ILCS 405/5-130(1)(a) (West 2004)), which provides in part 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 2004)). Santos argues the automatic transfer provision violates the due process clauses of the United States and Illinois Constitutions, 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 automatically mandates 15-year-old juveniles like him be subject to the same sentencing scheme as adults. Santos 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. *E.g.*, *People v. Wright*, 194 Ill. 2d 1, 23 (2000).

¶ 84 "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).

¶ 85 Santos claims generally he was deprived of life, liberty or property without due process of law, under both the United States and Illinois constitutions. U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2. Although the Illinois Supreme Court has not decided this issue, this court has 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*, 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).

¶ 86 Santos again relies on the United States Supreme Court cases in *Roper* and *Graham*. Santos argues 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 *Graham*, 560 U.S. 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 juvenile offenders charged with first degree murder may not be tried in adult court.

¶ 87 Santos 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 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 Santos 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, Santos offers no new argument which would cause us to reconsider our decisions in cases like *Jackson* and *Salas*. Thus, Santos's constitutional challenges to the automatic transfer provision fail.

¶ 88

CONCLUSION

¶ 89 For all of the aforementioned reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 90 Affirmed.