

FIRST DIVISION
FILED: March 25, 2013

No. 1-11-3308

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF)	Appeal from the
ILLINOIS,)	Circuit Court of
)	Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 09 CR 4981
)	
GABRIEL CONTRERAS,)	Honorable
)	Stanley J. Sacks,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Cunningham and Delort concurred in the judgment.

ORDER

- ¶ 1 *Held:* The judgment of the circuit court was affirmed where: the evidence was sufficient to sustain the defendant's conviction for first degree murder; the defendant's motion for a new trial based on newly discovered evidence was properly denied because the evidence presented was neither new nor material; and the defendant's sentence was not excessive.
- ¶ 2 After a bench trial, the defendant, Gabriel Contreras, was found guilty of first degree murder (720 ILCS 5/9-1(a)(1) (West 2008)) and sentenced to 50 years' imprisonment. On appeal, he argues

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that: the evidence was insufficient to sustain his conviction; the trial court erred in denying his motion for a new trial based upon newly discovered evidence; and his sentence was excessive. We affirm.

¶ 3 On March 17, 2009, the defendant and Anthony Collazo were indicted for intentionally shooting and killing Jason Mueller on August 10, 2008. In pre-trial motions to admit gang evidence, the State alleged that: the defendant and Collazo were members of the Satan Disciples street gang; the defendant was shot by a member of a rival street gang, the C-Notes, in the weeks prior to Mueller's murder; and the defendant and Collazo mistakenly shot Mueller, believing that he was a C-Note gang member, in retaliation. The defendant and Collazo were tried together, with the defendant electing a bench trial and Collazo electing a jury. The matter proceeded to trial on May 17, 2011, and the following relevant facts were adduced at the defendant's trial.

¶ 4 Erin Storey testified that on the night of August 10, 2008, she was working at Religion Nightclub, when Mueller came into the club. When Storey got off work around 4:30 a.m., Mueller drove to her home at 1903 West Ohio. Mueller left her apartment approximately 25 minutes later, intending to get a cab to go home. Storey last saw Mueller walking east on Ohio Street.

¶ 5 Lorena Zuniga testified that at approximately 5:50 a.m. on August 10, she was getting something out of the trunk of her vehicle, which was parked, facing west, on the north side of the 1900 block of West Grand Avenue. Her husband and son were in another car parked across the street, facing east, waiting for her. Zuniga testified that she turned around and saw three men walking southbound across Grand, near Wolcott. Wolcott was more than a half-block away from where Zuniga was standing. One man was a "chubby guy," but she could not recall the other two

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men. She could not recall height, race, or build. Zuniga testified that one man took a gun out of his pocket and shot one of the men twice. The man fell immediately. She recalled that the "chubby one" did the shooting. The shooter and the other man kept walking southbound on Wolcott. Zuniga ran to her husband's car and told him what had occurred. Her husband drove to the corner of Grand and Wolcott, and they saw the man lying in the street. Police and ambulances arrived shortly thereafter. Zuniga could not identify any of the men's faces, and she did not hear the men say anything.

¶ 6 On cross-examination, Zuniga remembered telling the responding police officer that the shooter had short dark hair, an olive complexion, and was heavy-set. She did not recall describing the shooter as a Hispanic male, approximately 20 years old, 5'5" tall, and 200 pounds. She did not recall describing the second man as a Hispanic male in his twenties, with an olive complexion, and about 5'5" tall. Zuniga also did not recall the descriptions that she gave a police officer at the police station. She just recalled that the shooter was the "big one" with olive skin and short black hair. Zuniga was unable to identify the men in a lineup at the police station.

¶ 7 Detective Patrick Thelen testified that he was assigned to the Mueller murder and arrived on the scene shortly after Mueller was taken to the hospital. He stated that several items were recovered from the scene: a Marlboro cigarette butt, a swab of saliva, a swab of blood, a metal bullet fragment, a piece of gum in a wrapper, and a gum wrapper. Detective Thelen determined that most of the items recovered had no relationship to the crime. His partner spoke to Zuniga, and the description of the shooter that she provided was a male Hispanic, short black hair, 5'5" tall, heavy belly, 200 lbs.

¶ 8 Marc Pomerance, a forensic firearms scientist, testified that he received two packets of evidence; one contained a fired bullet and two metal fragments, and the other contained one fired

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bullet jacket fragment, retrieved from the scene. He classified the fired bullet and fired bullet jacket as .38 or .357 caliber; the two metal fragments were unsuitable to determine the caliber. He compared the fired bullet and the fired bullet jacket fragment together and concluded that they were fired from the same firearm. Pomerance explained that .38 or .357 magnum cartridges were typically used with revolvers.

¶ 9 The parties stipulated that the bullet was retrieved from the medical examiner's office after Mueller's autopsy. The parties also stipulated to the facts contained in the autopsy report of Dr. Valerie Arangelovich: that Muller suffered gunshot wounds to the left side of his face, his left lower chest, and his left buttock; and that none of the wounds revealed evidence of close range firing.

¶ 10 Nicholas Molena testified next for the State. Molena testified that he was not a gang member. He knew Collazo by name and by his nickname "Josh," but knew the defendant only as "Trigger." Molena knew Collazo for about four to five years and knew him to be a member of the Satan Disciples street gang. He did not know whether the defendant was a gang member. Molena knew Trigger from his neighborhood around Grand and Ashland. In 2008, Molena was living near the intersection of Grand and Wolcott. On August 10, just before 6 a.m., Molena heard gunshots and went outside. His neighbor, a police officer, told Molena to go back inside, which he did. Around 11 a.m. that morning, Molena met with Michael Rodriguez, a Satan Disciples member, at a gas station at Ashland and Huron. He testified that he saw the defendant and Collazo with Rodriguez in a van at the gas station. Rodriguez was in the driver's seat; Collazo was in the front passenger seat; and, the defendant was in the back. Molena testified that Collazo and the defendant began talking after he got inside the van. Molena identified the C-Notes as a rival gang to the Satan

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Disciples. He then denied that Collazo and the defendant discussed getting revenge on the C-Notes. He denied that they discussed the defendant having been shot several weeks earlier. He denied that they discussed shooting a C-Note that morning in retaliation. Molena denied that Collazo gave a gun to Rodriguez to stash and that he went with Rodriguez to stash the gun. He denied seeing Collazo at Talcott Park later that day and informing him that he heard on the news that the person shot was not a C-Note but a pizza delivery man. In the course of questioning, Molena contradicted his earlier trial testimony and stated that he was never in the van at all and was home asleep.

¶ 11 Molena's prior handwritten statement and grand jury testimony from February 2009 were inconsistent with his trial testimony. Before the grand jury, Molena testified to the following facts that were also contained in his written statement. Molena admitted that he was a Satan Disciples gang member, along with the defendant and Collazo. He met Rodriguez, the defendant, and Collazo at a gas station around 11 a.m. They were all in a van at the gas station. The defendant and Collazo discussed that they shot a C-Note member that morning in revenge for a C-Note having shot the defendant earlier. In his handwritten statement, Molena stated that the defendant told him that he and Collazo ran up on a C-Note member because the defendant was shot in the arm a few weeks earlier. According to Molena, the defendant and Collazo "ran up on a C-Note," and Collazo shot the man. Collazo yelled, "C-Note killer. SD love," and shot the man three times. In the van, Collazo gave a silver revolver to Rodriguez. Later that day, Molena was driving in the van with Rodriguez, when Rodriguez jumped out and stashed the gun under the paneling of a house. Molena described the gun as a silver revolver with a dark handle. Also later that day, Molena saw Collazo at Talcott Park. Collazo mentioned how they got a C-Note, and Molena told him that he shot a pizza delivery

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guy, because he heard that on the news. Collazo said "oh, did I[?] I thought it was a C-Note." Collazo explained to Molena that he thought it was a C-Note gang member because the man looked like a C-Note—a "white guy" dressed like a C-Note. Collazo said that he shot the man three times. Molena acknowledged that the police and ASA treated him "very well" and "like a gentleman," and that he provided his statement freely and voluntarily.

¶ 12 On cross-examination, Molena testified that he knew that the Satan Disciples and C-Notes were "at war" because he lived close to the border of the two gangs' territories. He testified that in September 2008, he initially told police that he was part of the van conversation. Molena also testified that in March 2010, he again denied being in the van and told the investigator that he lied to detectives in February 2009. Molena explained that the police kept questioning him about the conversation in the van, and so he spoke to them in February 2009 to clear his name. Molena stated that the police kept him in one of the holding cells, handcuffed to the bar for several hours before they moved him to another room. He was kept at the station for a day and a half, arriving in the late afternoon hours of February 17 and staying until the next morning's grand jury hearing. He stated that he lied at the grand jury hearing and in the statement to the ASA. Molena said that a detective "Lopez" had threatened him when they were in the car on the way to the police station in February 2009. Molena admitted that the defendant and Collazo appeared the same in the courtroom as they did in August 2008, other than the fact that Collazo's hair was longer in 2008. Molena described them as having similar builds, with the defendant having the bigger build.

¶ 13 Detective Gregory Jones testified that on August 20, 2008, he was notified that police had Rodriguez in custody for a traffic offense. After speaking to Rodriguez, Detective Jones wanted to

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speak to Molena, and did so on September 24, 2008. On February 17, 2009, Detective Jones and his partner went to Molena's home and asked him to speak with them at the station again. Molena agreed. Based on the interview with Molena, Detective Jones wanted to interview another man, Humberto Miranda. Officers went to Miranda's apartment, where they discovered Collazo and arrested him. The defendant was arrested around the same time. Both the defendant and Collazo were arrested while Molena was at the police station, cooperating with Detective Jones by giving him information. Detective Jones denied that Molena was ever handcuffed; he was free to leave at any time. Molena was not forced to come to the police station and Detective Jones denied forcing his way into Molena's home. Detective Jones and his partner took Molena to the courthouse for the grand jury hearing on February 18, and Molena went willingly. Detective Jones agreed that the defendant was 5'9" tall and weighed 185 lbs.

¶ 14 The parties stipulated that the defendant's DNA was not found on any of the evidence retrieved from the scene.

¶ 15 The trial court found the defendant guilty, agreeing with the defense that the case came down to Molena. It found that Molena's testimony in court was unreliable, because he told different versions of events on the stand. The trial court noted that Molena first testified that he was in the van, but that no conversation about the murder ensued. Later, Molena denied ever being in the van at all. The trial court deemed Molena's grand jury testimony reliable, because that version made sense. Before the grand jury, Molena admitted being a gang member, making it believable that these fellow gang members discussed the murder in his presence. Further, Molena was correct in that Mueller was shot three times in the early morning hours. Molena also provided a motive for a

seemingly inexplicable shooting and described a gun that the ballistic evidence showed could have shot the type of bullet retrieved from the victim. The trial court disregarded Zuniga's descriptions because she did not recall much detail and admitted she was over a half-block away. According to the trial court, the fact that Zuniga and Molena had different opinions as to who was "bigger" was not a deciding factor, because one's idea of big is subjective.

¶ 16 On September 2, 2011, the defendant filed a motion for a new trial, arguing in relevant part that the State's motive theory was refuted by evidence that he was not shot in the summer of 2008 until after Mueller's murder. Three reports from Stroger Hospital's emergency room were attached to the motion in support. First, a chest x-ray report, dated August 11, 2008, which stated "other" for the reason for the exam. The history stated "26 year old male status post trauma." In the findings, it is noted that "[a] metallic bullet fragment is projected over the right humerus." Second, a humerus x-ray report, dated August 11, 2008, indicated "trauma" as the reason for the exam. It noted that a "bullet fragment overlies right humeral head." Third, a discharge report indicated an admission and discharge date of August 11, 2008, with a discharge diagnosis of "GSW to right lateral upper arm." The patient history stated:

"status post GSW to right lateral upper arm, neg LOC. Patient was brought in by cousin, unboarded and uncollared. Primary survey intact, GCS 15. Secondary survey notable for 1x GSW in right lateral upper arm, no missile palpable. Distal pulses ++ and symmetrical. Median, ulnar and radial sensory and motor intact."

¶ 17 It further noted that the x-rays showed "no fractures, shows retained bullet." The trial court denied the defendant's motion for a new trial. During the hearing, the trial court noted that the

records did not establish whether the defendant was shot before or after Mueller's murder or whether the records related to a separate injury.

¶ 18 On October 31, 2011, the defendant's sentencing hearing took place. The defendant faced a 20- to 60-year base sentencing range, with a mandatory enhancement of 15 years, because a firearm was involved. See 730 ILCS 5/5-8-1(a)(1) (West 2008). The court heard the testimony of several arresting officers related to the defendant's various past arrests, which included drug offenses, gang activity, armed robbery, and a shooting in which the defendant was implicated as the shooter which went unprosecuted because the victim feared retaliation. The defendant was sentenced to six years' imprisonment as a result of the armed robbery. Additionally, Cody Lettiere, a criminal intelligence officer for the Cook County Sheriff's Department, testified that within the jail's Latin Folk hierarchy, the defendant was second in command. Evidence of gang communication within the defendant's cell confirmed this information. Several witnesses gave victim impact statements, and many written statements were submitted to the trial court for consideration. The defendant made a statement apologizing to the family, but denying that he murdered Mueller. In sentencing the defendant, the trial court noted the defendant's lengthy criminal history, including armed robbery, possession of a firearm, criminal trespass, and two separate drug offenses, and his heavy gang involvement. The court sentenced him to 35 years' imprisonment, plus the additional mandatory 15 years for the use of a weapon, for a total of 50 years' imprisonment. The defendant then moved for reconsideration of his sentence, which the trial court denied. The defendant timely appealed.

¶ 19 On appeal, the defendant first argues that Molena's recanted prior inconsistent statements, which were not corroborated by other evidence, were insufficient to prove him guilty beyond a

reasonable doubt. We disagree.

¶ 20 "A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates reasonable doubt of the defendant's guilt." *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267 (1985). When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant. *Id.* Rather, " 'the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact is best equipped to judge the credibility of witnesses, decide the weight to be given their testimony, and resolve any conflicts in the evidence. *Id.* at 261-62. Because the fact-finder saw and heard the witnesses, its findings concerning credibility are entitled to great weight. *People v. Wheeler*, 226 Ill. 2d 92, 114-15, 871 N.E.2d 728 (2007). These standards apply to all evidence, including prior inconsistent statements. *People v. Williams*, 332 Ill. App. 3d 693, 696 (2002). "Prior inconsistent statements alone may be sufficient to support a conviction," and it is the duty of the trier of fact to resolve the conflicts in the statements and determine which is more credible. *Id.* at 696-97.

¶ 21 The defendant largely relies on three cases to support his contention that his conviction cannot be sustained by a disavowed witness statement and the lack of corroborative evidence: *People v. Brown*, 303 Ill. App. 3d 949, 709 N.E.2d 609 (1999), *People v. Arcos*, 282 Ill. App. 3d 870, 668 N.E.2d 1177 (1996), and *People v. Parker*, 234 Ill. App. 3d 273, 600 N.E.2d 529 (1992). However, each of these cases, which we discuss later, was decided under its particular facts and circumstances; they do not establish, as a matter of law, that a recanted prior inconsistent statement cannot support

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a conviction. See *People v. Zizzo*, 301 Ill. App. 3d 481, 488-89, 703 N.E.2d 546 (1999). "[R]egardless of the nature of the evidence," the *Collins* standard of review applies. *People v. Schott*, 145 Ill. 2d 188, 203, 528 N.E.2d 690 (1991). "Thus, where a jury or trial court has convicted a defendant on the basis of a recanted prior inconsistent statement, the question for the reviewing court is not whether any evidence existed to corroborate that statement." *Zizzo*, 301 Ill. App. 3d at 489. Rather, the question is whether the *Collins* standard has been met; that is, 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 proven beyond a reasonable doubt. *Id.*

¶ 22 Here, the trial court did not find Molena to be truthful in his trial testimony, because he was inconsistent in his initial denial that any conversation about a murder occurred in the van, and his later denial that he was in the van at all. The trial court believed Molena's grand jury testimony. Molena's prior statements provided details that proved to be accurate; namely, that Mueller was shot three times; and, a revolver was used in the crime. Molena also provided a motive for an otherwise inexplicable crime. Having accepted Molena's grand jury testimony as credible evidence, the *Collins* standard is satisfied. See *People v. Curtis*, 296 Ill. App. 3d 991, 999, 696 N.E.2d 372 (1998) (finding corroborative evidence is not necessary to bolster a prior inconsistent statement properly admitted under section 115-10.1 of the Code and that "a reviewing court not only is under no obligation to determine whether the declarant's testimony was 'substantially corroborated' or 'clear and convincing,' but it may *not* engage in any such analysis"). Although corroborative evidence is not required, the trial court noted other evidence that corroborated Molena's statement. A revolver was identified as a type of gun that could have been used to shoot the type of bullet found in Mueller,

which matched the type of gun that Molena saw Collazo hand to Rodrigues. Molena said that Collazo admitted shooting the man three times, which matched the number of times Mueller was shot.

¶ 23 The defendant also argues that Molena's statement and Zuniga's testimony were inconsistent in that: Zuniga did not hear the men say anything, whereas Molena stated that Collazo yelled "C-Note Killer, SD Love"; and, Zuniga testified that the bigger man was the shooter, whereas Molena testified that the defendant was the bigger of the two men, but Collazo was the shooter. The trial court resolved these conflicts by finding that Zuniga testified that she was over a half-block away from the shooting and that she did not identify either the defendant or Collazo.

¶ 24 As stated, the facts and circumstances of this case differ from the cases that the defendant relies upon. First, in *Brown*, the only evidence against the defendant was the disavowed prior statement of a witness who told police that he saw the defendant shoot and kill the victim. *Brown*, 303 Ill. App. 3d at 965. The appellate court reversed the defendant's murder conviction, noting that the witness's first statement implicating the defendant was not made until nearly two years after the crime occurred when the witness was in custody and afraid that he would be charged with a drug offense. *Id.* The appellate court stated that where the witness's prior statements "were not made contemporaneously with the victim's shooting and lacked corroborative evidence," the evidence was insufficient to prove the defendant guilty beyond a reasonable doubt. *Id.* In this case, Molena provided the statement only six months after the crime, and he was not under any police threats of being arrested for this crime or another. Further, the details that Molena provided were substantiated by the evidence; namely, the number of times that Mueller was shot and the type of weapon likely

used.

¶ 25 In *Arcos*, the trial court found that the witness, who disavowed his written statement and grand jury testimony implicating the defendant in a murder, was a " 'thoroughly disreputable person who cannot be believed.' " *Arcos*, 282 Ill. App. 3d at 871. The statement was also made nearly three years after the murder, and the witness made the statement while in custody for another offense and fearing imprisonment with gang members that wanted to kill him. *Id.* at 873. The trial court then determined that the witness's handwritten statement and grand jury testimony were more credible than his disavowal at trial. *Id.* at 871. It also believed that the witness's statement was bolstered by clear and convincing corroborative evidence. *Id.* at 874-75. The appellate court reversed the defendant's murder conviction, finding that the trial court clearly rejected the witness's credibility and that it incorrectly concluded that the other evidence presented was corroborative. *Id.* at 875. The appellate court concluded that the "trial court must have looked to the corroborative evidence to support the essential elements of the State's case," including the defendant's identity as a participant in the murder, because it had clearly rejected the witness's credibility in its statements on the record. *Id.* at 876. The appellate court determined that the corroborative evidence was, in fact, not corroborative at all, and it therefore held the evidence was insufficient to sustain the defendant's conviction. *Id.* Here, the trial court did not find Molena to be an entirely incredible witness. Rather, the court believed that he was truthful in his grand jury testimony and not truthful in court. Therefore, unlike in *Arcos*, the trial court did not look to the corroborating evidence to support the elements of the the crime, but only to enhance the credibility of Molena's statement.

¶ 26 In *Parker*, the defendant was convicted of murder, armed violence, attempted murder and

aggravated battery based on the prior inconsistent statements of three witnesses. *Parker*, 234 Ill. App. 3d at 274. The first witness, a surviving victim of the shooting, denied giving the first statement to police identifying the defendant as the man who shot him, explaining that the statement was taken only seven days after his surgery when he was still recovering and in great pain. *Id.* at 276. The first witness admitted he signed the statement without reading it, because he wanted the detectives to leave his hospital room. *Id.* The second witness testified that he gave his statement identifying the defendant as the shooter, because the detective came to his home with a prepared statement and told him that if he did not sign it he would be arrested for withholding information " 'because somebody put me at the scene of the crime.' " *Id.* at 277. The second witness was only 17 years old, had just been released from the juvenile Department of Corrections, and was frightened by the detective's threat. *Id.* The third witness testified that he told police that he saw the defendant with a gun earlier prior to the murder, because the police had beaten him and forced him to sign the statement. *Id.* at 278. The appellate court determined that the three prior statements "were severely impeached by the witnesses' trial testimony, which exculpated defendant and cast doubt on the authenticity of the statements." *Id.* at 280. It explained further that the "lack of credible eyewitness testimony *** combined with the complete absence of any physical evidence tying defendant to the crime" prompted it to find that the evidence was insufficient to sustain the defendant's convictions. *Id.* at 280. In this case, there was no claim that the detectives coerced or forced Molena into signing his statement or forced him into testifying before the grand jury. Moreover, while Molena was cooperating with Detective Jones at the police station, the police were able to arrest both the defendant and Collazo, which the trial court considered demonstrative that Molena was providing

good information at that time.

¶ 27 We find *Zizzo*'s facts to be more in line with the facts present here. In *Zizzo*, the jury had two statements of a witnesses regarding the defendant's role in a banking fraud scheme, both of which could not be true. *Zizzo*, 301 Ill. App. 3d at 489. The appellate court stated that the "jury reasonably could have concluded, after listening to and watching" the witness on the stand, that the testimony he gave in a prior court proceeding was truthful and his courtroom testimony was untruthful. *Id.* at 489. While the appellate court noted that the defendant's fingerprints found on certain bank files corroborated the witness's prior statement implicating the defendant, the court acknowledged that the jury could have inferred those prints were left while the defendant was performing his regular job duties or in the course of the crime. *Id.* at 490. The appellate court held, that viewed in the light most favorable to the State, the evidence supported the jury's conclusion that the prior statement was corroborated by the prints, establishing the defendant's guilt. *Id.*, see also, *People v. Morrow*, 303 Ill. App. 3d 671, 677, 708 N.E.2d 430 (1999) (finding the witness's previous inconsistent statements alone were sufficient to prove the defendant's guilt beyond a reasonable doubt, and although there was corroborative evidence, it was not required to sustain the conviction).

¶ 28 Likewise, the trial court found that Molena's prior grand jury testimony was truthful, and that the facts, including the type of gun and number of shots, bolstered its credibility. The trial court heard the cross-examination of Molena, including his testimony that he initially denied being in the van and his explanation for providing the statements to the contrary, but it believed Molena was truthful in his grand jury testimony. The trial court, as the trier of fact in a bench trial, has the duty to resolve conflicts in the evidence and determine the weight the evidence should be given. It is not

this court's function to reweigh the evidence. After viewing Molena's prior statement and prior testimony and the facts of this case in the light most favorable to the State, a reasonable fact-finder could have found the essential elements of the crime proven beyond a reasonable doubt, and therefore reversal is not warranted.

¶ 29 Next, the defendant argues that the trial court abused its discretion in denying his motion for a new trial in light of newly discovered medical evidence, which allegedly discredits the State's motive theory that Mueller was killed in retaliation for an earlier shooting. We disagree.

¶ 30 The denial of a motion for a new trial based on newly discovered evidence will not be disturbed on appeal absent an abuse of discretion. *People v. Gabriel*, 398 Ill. App. 3d 332, 350, 924 N.E.2d 1133 (2010). Newly discovered evidence warrants a new trial when: (1) it was not discovered until after trial; (2) it is of such a character that it could not have been discovered prior to the trial by the exercise of due diligence; (3) it is material to the issue and not merely cumulative; and (4) it is of such a conclusive nature that it will probably change the result on retrial. *Id.* Here, we cannot say that the trial court abused its discretion when the evidence submitted as "newly discovered" was not of the type that could not have been discovered prior to the trial by exercising due diligence. In fact, the defendant admitted in his motion to the trial court and in his brief to this court that his medical records could have been obtained and used at trial, but he chose not to present any evidence at trial. Moreover, an examination of the records does not reflect that these medical records were material or exculpatory. The records do not disclose when the defendant allegedly was shot; the records merely say that the defendant's cousin brought him in with a gunshot wound to his right arm. The injury could have occurred within weeks, days, or minutes of the defendant's

admission to the emergency room. The injury discussed in the medical records also could have involved an entirely different incident than the one that Molena referred to in his grand jury testimony. The cases which the defendant cites to support his argument for a new trial involved evidence that was actually newly discovered and material (*People v. Ortiz*, 235 Ill. 2d 319, 337, 919 N.E.2d 941 (2009)) or was diligently attempted to be discovered before trial and material (*People v. Torres*, 47 Ill. App. 3d 101, 108, 361 N.E.2d 803 (1977)). Therefore, those cases are not applicable to the facts of this case. Because the medical records were neither new nor material, the trial court did not abuse its discretion in denying the defendant's motion for a new trial.

¶ 31 Finally, the defendant argues that his 35-year base sentence—15 years above the minimum sentence—was excessive, given his young age and minimal role in the offense. We disagree. The trial court has broad discretionary authority in sentencing a criminal defendant. *People v. Bowman*, 2012 IL App (1st) 102010, ¶ 72, 973 N.E.2d 970. The reviewing court shows great deference to a trial court's sentencing decision because it is in a better position to decide the appropriate sentence. *Id.* Accordingly, a trial court's sentencing decision is not overturned absent an abuse of discretion. *Id.* In determining an appropriate sentence, the trial court is required to consider all factors in aggravation and mitigation, which includes the defendant's credibility, demeanor, general moral character, age, as well as the nature and circumstances of the crime. *Id.* If the sentence imposed is within the statutory range, it will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Id.*

¶ 32 Here, the sentencing range for first degree murder was 20 to 60 years. See 730 ILCS 5/5-8-1(a) (West 2008). The trial court considered the factors in aggravation and mitigation and discussed

many of the factors on the record. There is no reason to believe that the trial court did not consider the defendant's age or role in the crime when it sentenced him. In fact, the court mentioned the defendant's age during sentencing, discussed the circumstances of the crime, and the defendant's lengthy criminal history and history of heavy gang participation. The record does not show that the trial court relied on any improper factor, and a sentencing judge is under no obligation to discuss every factor. *People v. Hill*, 408 Ill. App. 3d 23, 30, 945 N.E.2d 1246 (2011). Evidence was presented in aggravation and mitigation, and we presume the trial court considered that evidence absent a showing in the record to the contrary. *Id.* Accordingly, we do not find that the trial court abused its discretion in sentencing the defendant to a term 15 years above the statutory minimum, given the nature and circumstances of the crime and the aggravating and mitigating evidence presented at the sentencing hearing.

¶ 33 In conclusion, we find that the evidence was sufficient to sustain the defendant's conviction for first degree murder, and that the trial court did not abuse its discretion in denying the defendant's motion for a new trial or in sentencing him to a term 15 years above the statutory minimum.

¶ 34 Based on the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 35 Affirmed.