

FIRST DIVISION  
June 29, 2015

No. 1-13-1019

**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(3)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 915
	)	
MARVELL WILLIAMS,	)	Honorable
	)	Stanley J. Sacks,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE HARRIS delivered the judgment of the court.  
Presiding Justice Delort and Justice Connors concurred in the judgment.

**ORDER**

**Held:** The circuit court's finding pursuant to section 5-8-4(d)(1) of the Unified Code of Corrections (730 ILCS 5/5-8-4(d)(1) (West 2010)) that defendant inflicted severe bodily injury is not against the manifest weight of the evidence. Accordingly, we must honor defendant's procedural default because defendant has not shown that plain error occurred. Pursuant to our supreme court's decision in *People v. Patterson*, 2014 IL 115102, ¶¶ 88-111, we also reject defendant's constitutional challenge to his sentence.

¶ 1 A jury convicted defendant, Marvell Williams, of attempted murder, aggravated battery with a firearm, and two counts of armed robbery with a firearm in connection with a robbery and shooting that occurred on April 22, 2010, when defendant was 17 years old. The circuit court sentenced defendant to concurrent 21-year prison terms for his two armed robbery with a firearm convictions. Defendant's aggravated battery with a firearm conviction merged into his conviction for attempted murder, and the circuit court sentenced defendant to 21 years' imprisonment for attempted murder. Due to the circuit court's finding that defendant inflicted severe bodily injury, section 5-8-4(d)(1) of the Unified Code of Corrections (730 ILCS 5/5-8-4(d)(1) (West 2010)), mandates that defendant's sentence for attempted murder is to run consecutively to his convictions for armed robbery with a firearm for a total of 42 years' imprisonment. Defendant is required to serve 85% of his sentence for his conviction for attempted murder. 730 ILCS 5/3-6-3(a)(2)(ii) (West 2010).

¶ 2 Defendant raises two issues for our review: (1) whether, under the plain-error doctrine, this court may review the circuit court's finding pursuant to section 5-8-4(d)(1) of the Unified Code of Corrections (730 ILCS 5/5-8-4(d)(1) (West 2010)) that defendant inflicted severe bodily injury; and (2) whether his sentence is constitutionally invalid due to the application of mandatory firearm enhancements, mandatory consecutive sentences, and the requirement that he serve 85% of his sentence for attempted murder. We hold that the circuit court's finding pursuant to section 5-8-4(d)(1) of the Unified Code of Corrections (730 ILCS 5/5-8-4(d)(1) (West 2010)) that defendant inflicted severe bodily injury is not against the manifest weight of the evidence. Accordingly, we must honor defendant's procedural default because defendant has not shown plain error occurred. Pursuant to our supreme court's decision in *People v.*

*Patterson*, 2014 IL 115102, ¶¶ 88-111, we also reject defendant's constitutional challenge to his sentence.

¶ 3 JURISDICTION

¶ 4 The circuit court sentenced defendant on March 7, 2013. Defendant timely filed his notice of appeal on the same day. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case entered below. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); R. 606 (eff. Feb. 6, 2013).

¶ 5 BACKGROUND

¶ 6 A jury convicted defendant of attempted murder, two counts of armed robbery, and aggravated battery with a firearm in connection with the April 22, 2010, shooting and armed robbery of William Ware and the armed robbery of Kawanza Morton. Defendant was 17 years old at the time of the offense. The circuit court sentenced defendant to a total of 42 years' imprisonment as follows: two concurrent 21-year prison terms for his two convictions for armed robbery; and 21 years' imprisonment, to be served consecutively to his armed robbery convictions, for attempted murder.<sup>1</sup> Pursuant to section 5-8-4(d)(1) of the Unified Code of Corrections, the circuit court imposed consecutive sentences due to defendant's class X felony convictions combined with its finding that defendant inflicted severe bodily injury to William Ware. 730 ILCS 5/5-8-4(d)(1) (West 2010).

¶ 7 At trial, the State presented the following evidence relevant to this appeal. William Ware testified that on April 22, 2010, he worked for Domino's Pizza at its Blue Island, Illinois,

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<sup>1</sup> Defendant's conviction for aggravated battery with a firearm merged into his attempted murder conviction.

location. On that date, Ware worked the 4 p.m. to 11 p.m. shift. Around dusk, Ware drove his car to deliver a pizza to a residential property at 118th Street and Eggleston, in Chicago. His girlfriend and coworker, Kawanza Morton, rode in the passenger side of his vehicle. When he parked his car, he called the phone number associated with the order to confirm the delivery. The unnamed person who answered told Ware "yes, here they come."

¶ 8 Ware approached the house and noticed three men in the back of the house. He returned to his car because it "[d]idn't feel right." Ware, however, was not able to start his car. Defendant approached with a gun, and directed Ware to get out of the car. Defendant wore a black and grey hooded sweatshirt and carried a small silver gun. Defendant told Ware to give him everything out of his pockets. Ware gave defendant money and his phone. Another man, wearing a white hooded sweatshirt, pulled Ware to the side and made him lay down on his stomach in nearby grass. Defendant came over and searched Ware a second time. The other man in the white hooded sweatshirt ran away at this point. Ware testified that defendant told him to close his eyes before he started shooting his gun. Ware thought he heard "four or five" shots, and testified "the first bullet grazed my hat, my head, the hat I had on, and the second one hit my back." When defendant ran away, Ware ran to his vehicle and drove back to the store with Morton. Ware bled from his wound. An ambulance came to the store and took Ware to the hospital. At the hospital, Ware was treated for a bullet wound. Ware testified that the bullet "went in the back and out through the front." He sustained scarring on both his back and his abdomen from the gunshot wound. The hospital released Ware the next day.

¶ 9 The next day, Ware went to the cellular phone store to close out his old phone that had been stolen and to get a new one with the same phone number. Ware noticed that an email account that he was not familiar with had received a photograph taken from the phone that had

been stolen from him the night before. Ware performed a search using the unfamiliar email address which resulted in Ware finding defendant's profile on Facebook.com. Ware reported the results of his search to the police, who eventually arrested defendant.

¶ 10 Kwanza Morton testified she went with Ware on the delivery around "7:40, 7:50, coming towards the end of 7 o'clock." She described the conditions as "dusky, close to dark." When defendant forced Ware out of the car, Morton remained in the car. She observed defendant searching Ware's pockets and saw defendant "take something out and put it into his pocket." Another person asked Morton to get out of the car. At this point, defendant also attempted to start the car, but was unable to do so. Defendant pointed the gun at Morton and asked her to put the car in drive, but Morton was also unable to start the car. Defendant exited the car and took Morton's purse. Morton testified that defendant then "stopped over [Ware] and he bent down and stood back up, and then I saw him aim down" with the gun. Defendant was standing over Ware, who was laying face down. Morton then heard "the shots fire." Defendant "[r]an off with his arm pointed back" toward Ware and fired more shots. Morton testified that when defendant ran away, Ware "jumped from the ground, he screamed and he got into the driver's seat and we pulled off." Ware told her he was injured. Ware drove back to the pizza store, and the owner of the store called the police. Morton testified Ware was in the hospital "[a] little over a few hours, close to a day."

¶ 11 Eric Thomas testified he was with defendant and "Ali," during the course of the incident. Thomas testified that defendant had a gun, and that "[h]e shot to the sidewalk when [h]e was running." He explained that defendant shot both "[t]owards the victim" and "past the victim." He later explained that the victim was the "[p]izza man." Thomas testified that he did not know

if defendant hit the victim with any of the gunshots. Thomas admitted that he was also charged in the offenses and was serving a prison sentence due to his actions that day.

¶ 12 On cross-examination, defense counsel asked Thomas, "[w]ho shot him," to which Thomas responded, "Ali." On redirect examination, Thomas admitted that he had given a statement to the police after the shooting in which he stated that he saw defendant point his gun at the pizza guy, and shoot down to the side near the pizza guy before he ran away. He further agreed that in the statement, he told the police that he heard two or three more shots as he ran away.

¶ 13 The circuit court denied defendant's motion for a directed verdict.

¶ 14 The jury convicted defendant of attempted murder, aggravated battery, and two counts of armed robbery. Defendant filed a motion for a new trial, which the circuit court denied.

¶ 15 In announcing defendant's sentence, the circuit court noted defendant's youth as well as the facts of the crime. The circuit court sentenced defendant to two concurrent 21-year prison terms for his armed robbery with a firearm convictions. The circuit court sentenced defendant to 21 years' imprisonment for the attempted murder of Ware, and merged defendant's aggravated battery conviction with his attempted murder conviction. Due to the circuit court's finding that the through and through gunshot wound defendant inflicted on Ware constituted severe bodily injury pursuant to section 5-8-4(d)(1) of the Unified Code of Corrections (730 ILCS 5/5-8-4(d)(1) (West 2010)), defendant's 21-year sentence for attempted murder would run consecutive to his two concurrent 21-year prison terms for armed robbery with a firearm. The circuit court reasoned that "a through and through gunshot wound to the man's back coming out to the front, he was in the hospital for a number of hours afterwards, is severe bodily injury." Accordingly, the circuit court sentenced defendant to a total of 42 years' imprisonment. The

circuit court denied defendant's subsequent motion to reconsider his sentence. Defendant timely filed his notice of appeal.

¶ 16

#### ANALYSIS

¶ 17 Defendant first asks this court, under the plain error doctrine, to review the circuit court's finding that he inflicted a severe bodily injury to William Ware. Defendant argues that the circuit court's finding is against the manifest weight of the evidence because Ware was able to drive himself after being shot, he required no surgery or hospital stay, and the record is devoid of any evidence of long-term effects of the gunshot wound. Accordingly, defendant asks that we modify his sentence so that his sentence for attempted murder runs concurrently, and not consecutively, to his two armed robbery sentences.

¶ 18 In response, the State argues that defendant's claim under the plain error doctrine fails because defendant has not satisfied his burden of proving that an error occurred. Specifically, the State contends that the evidence shows that defendant shot Ware in the back as Ware laid face down on the ground. The bullet went through Ware's body and out his abdomen. Accordingly, the State maintains that the circuit court properly found that defendant inflicted severe bodily injury to Ware pursuant to section 5-8-4(d)(1) of the Unified Code of Corrections. 730 ILCS 5/5-8-4(d)(1) (West 2010).

¶ 19 The plain-error doctrine allows a court of review to review forfeited claims of error that affect substantial rights. *People v. Eppinger*, 2013 IL 114121, ¶ 18. We will review a forfeited claim of error in either of the following circumstances: "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant; or (2) a clear or obvious error occurred, and the error is so serious that it affected the fairness of defendant's trial and the integrity of the judicial process,

regardless of the closeness of the evidence." *People v. Taylor*, 2011 IL 110067, ¶ 30. We must first, however, determine if an error even occurred in this matter. *Id.*

¶ 20 Section 5-8-4(d)(1) of the Unified Code of Corrections mandates the imposition of consecutive sentences where "[o]ne of the offenses for which the defendant was convicted was first degree murder or a Class X or Class 1 felony *and the defendant inflicted severe bodily injury*."<sup>2</sup> (Emphasis added). 730 ILCS 5/5-8-4(d)(1) (West 2010). This court has cautioned that not all gunshot wounds are severe, and we have looked to "the extent of the harm done by the gunshot in the particular case." *People v. Williams*, 335 Ill. App. 3d 596, 599 (2002). We will not, however, reverse the circuit court's finding of severe bodily injury unless the particular finding is against the manifest weight of the evidence. *People v. Deleon*, 227 Ill. 2d 322, 332 (2008). Under this standard of review, the circuit court's findings are entitled to deference because it was "in the best position to observe the conduct and demeanor of the parties and witnesses." *Id.* As such, "[a] finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *Id.* When reviewing the circuit court's credibility determinations or the weight it gives to the evidence or the inferences to be drawn from the evidence, we must not substitute our judgment for that of the circuit court. *Id.*

¶ 21 We hold that the circuit court's finding pursuant to section 5-8-4(d)(1) of the Unified Code of Corrections (730 ILCS 5/5-8-4(d)(1) (West 2010)) that defendant inflicted severe bodily injury is not against the manifest weight of the evidence. The State in this matter presented the testimony of the gunshot victim, William Ware. Ware testified that defendant shot him in his

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<sup>2</sup> Defendant only challenges the circuit court's finding that he inflicted severe bodily injury, as all of his convictions were class X felonies.



back and the bullet "went in the back and out through the front." Ware bled prior to going to the hospital, and once at the hospital, he was treated for a bullet wound. He sustained scarring on both his back and his abdomen due to the gunshot wound. After reviewing the above evidence, we cannot say that the circuit court's finding of severe bodily injury based on a gunshot that went in, through and out the trunk of the victim's body and caused bleeding and scarring is manifestly erroneous. *Deleon*, 227 Ill. 2d at 332. Specifically, the finding is not arbitrary, unreasonable, or not based on the evidence. *Id.*

¶ 22 In *People v. Deleon*, our supreme court upheld the circuit court's finding of severe bodily injury under a similar fact pattern to the case at bar. *Deleon*, 227 Ill. 2d at 331-35. The victim in *Deleon*, similar to Ware in this case, sustained a bullet wound that went through his chest and out his back. *Id.* Our supreme court held that the following evidence was "more than sufficient to support the trial court's finding:" the defendant shot the victim from approximately three feet away; photographs of the bullet wound; testimony regarding the bullet entering the victim's chest and exiting his back; and the victim's testimony that he felt "a 'burning in [his] chest.' " *Id.* at 332-33. In this matter, the evidence shows that Ware was made to lay face down in the grass. Defendant, according to Kawanza Morton, then stood over Ware and fired his gun. Ware testified that the bullet went through his body. Ware bled and sustained scarring as a result of the gunshot wound. We are of the opinion that the evidence in this case, similar to the evidence in *Deleon*, is more than sufficient to support the circuit court's finding that defendant inflicted severe bodily injury pursuant to section 5-8-4(d)(1) of the Unified Code of Corrections. 730 ILCS 5/5-8-4(d)(1) (West 2010).

¶ 23 In *Deleon*, our supreme court also rejected the defendant's argument that the victim's "postshooting conduct render[ed] benign his through-and-through gunshot wound to the chest."

*Id.* at 335. Specifically, our supreme court rejected the defendant's reliance on the following facts: the victim's ability to drive away from the scene of the crime and ask for help at a gas station; the victim's recovery of the bullet from his sweater; and the lack of evidence addressing the victim's hospital stay, treatment, or pain. *Id.* at 334. In doing so, our supreme court noted that "[i]rrespective of the victim's postshooting behavior, we would have no difficulty affirming that a wound of that nature constitutes 'severe bodily injury.' " *Id.* Defendant in this matter relies on similar arguments. Specifically, defendant argues that Ware managed to drive himself away from the scene, he did not require surgery or a lengthy hospital stay, and the State presented no evidence of long-term health effects. Although we acknowledge that the above facts are relevant to the circuit court's determination of whether a defendant inflicted severe bodily injury, we also have no issue with affirming the circuit court's finding of severe bodily injury based on the evidence showing Ware suffered a gunshot wound that went through his midsection and required hospitalization. Accordingly, the circuit court's finding of severe bodily injury pursuant to section 5-8-4(d)(1) of the Unified Code of Corrections (730 ILCS 5/5-8-4(d)(1) (West 2010)) is not manifestly erroneous. Therefore, we must honor defendant's procedural default because defendant has not shown that an error occurred which would allow this court to review his claim pursuant to the plain-error doctrine. *Taylor*, 2011 IL 110067, ¶ 30.

¶ 24 Defendant next argues in his opening brief that his sentence is constitutionally invalid due to the application of mandatory firearm enhancements, mandatory consecutive sentences, and the requirement that he serve 85% of his sentence for attempted murder.<sup>3</sup> According to

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<sup>3</sup> In defendant's opening brief, defense counsel mistakenly argued that defendant would have to serve 85% of his entire sentence. In defendant's reply brief, however, defense counsel

defendant, the above mandatory sentencing provisions violate the eighth amendment (U.S. Const. amend. VIII, XIV)) and the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11)) because they do not allow the sentencing court to consider a defendant's youth when crafting a sentence. Accordingly, defendant asks that we vacate his sentence and remand the matter for a new sentencing hearing where the circuit court may decline to apply either the enhancements or consecutive sentences, or both. Defendant, in his reply brief, acknowledges that after he filed his initial brief, our supreme court issued its opinion in *People v. Patterson*, 2014 IL 115102, ¶¶ 88-111. Defendant admitted that "the Illinois Supreme Court recently addressed these issues in \*\*\* *Patterson* \*\*\* deciding them in a manner contrary to the arguments he advanced in his opening brief." Defendant, in order to preserve his claim of error, notes that he has not abandoned his argument and maintains that *Patterson* was wrongly decided.

¶ 25 In *Patterson*, our supreme court upheld the constitutionality of the mandatory transfer provision of the Juvenile Court Act of 1987. *Patterson*, 2014 IL 115102, ¶¶ 88-111; 705 ILCS 405/5-130(1)(a)(ii) (West 2010). Defendant here does not challenge the mandatory transfer provision, but does argue that the application of mandatory firearm enhancements, mandatory consecutive sentences, and the requirement that he serve 85% of his sentence for attempted murder did not allow the circuit court to consider his youth when crafting his sentence. Defendant relies on the landmark Supreme Court decision of *Miller v. Alabama*, 567 U.S. \_\_\_, 132 S. Ct. 2455 (2012). As defendant admitted in his reply brief, our supreme court in *Patterson* rejected a juvenile defendant's reliance on *Miller* to argue that the mandatory provision

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pointed out the mistake and noted that defendant would only have to serve 85% of his sentence for attempted murder.

of the Juvenile Court Act of 1987, either alone or in conjunction with mandatory consecutive sentencing or " 'Truth in Sentencing' " provisions, violated both the eighth amendment (U.S. Const. amend. VIII, XIV)) and the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11)). *Patterson*, 2014 IL 115102, ¶¶ 99-111. In doing so, our supreme court declined to extend the Supreme Court's eighth amendment reasoning to a 36-year prison term for a juvenile offender, holding that such a sentence is not one of the "severe" criminal penalties addressed in *Miller*. *Id.* ¶110. We are bound to follow our supreme court's recent decision in *Patterson*, and reject defendant's challenge to the sentencing scheme used in this case and decline to extend the eighth amendment analysis used in *Miller* to defendant's 42-year prison term. Defendant's argument under the Illinois proportionate penalties clause also fails because "the Illinois proportionate penalties clause is co-extensive with the eighth amendment's cruel and unusual punishment clause." *Id.* ¶ 106. Accordingly, we affirm the judgment of the circuit court.

¶ 26

#### CONCLUSION

¶ 27 The judgment of the circuit court of Cook County is affirmed.

¶ 28 Affirmed.