2019 IL App (1st) 161672-U

FOURTH DIVISION
October 10, 2019

No. 1-16-1672

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

	)	Appeal from the
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
	)	Cook County
Plaintiff-Appellee,	)	
	)	
v.	)	No. 14 CR 08011
	)	
LUIS PADIN,	)	
	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Gordon and Justice Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgment of the circuit court of Cook County where the circuit court properly admitted other-crimes evidence and evidence of defendant's gang affiliation, defendant was not denied effective assistance of counsel, and his sentence was not excessive or in violation of the United States or Illinois Constitutions.

¶ 2 Following a jury trial, defendant was convicted of one count of first-degree murder (720 ILCS 5/9-1(a)(1) and (2) (West 2010)) and two counts of attempted first-degree murder (720

ILCS 5/8-4 (West 2010)), involving his personal discharge of a firearm. Defendant was sentenced to natural life imprisonment in the Illinois Department of Corrections (IDOC) without the possibility of parole for first-degree murder, and 30 years' imprisonment for each count of attempted murder, to run concurrently with each other and consecutive to the natural life sentence. On appeal, defendant maintains (1) the circuit court erred in admitting certain other-crimes evidence, (2) the circuit court erred in admitting evidence of his gang affiliation, (3) that he was denied effective assistance of counsel, and (4) his life sentence is excessive and violates the United States and Illinois Constitutions. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was indicted by a grand jury on 51 counts of first-degree murder, four counts of attempted first-degree murder, and three counts of aggravated discharge of a firearm. The indictment alleged that on September 6, 2010, defendant fired multiple rounds from a handgun at a vehicle driven by Cristela Martha (Martha) in which Jennifer Alvarado (Alvarado) and Monica Calderon (Calderon) were passengers. Alvarado was struck and killed.

¶ 5 A. Pretrial Proceedings

¶ 6 Prior to trial, the State elected to proceed on two counts of first-degree murder, predicated on defendant intentionally killing Alvarado or knowing that his actions created a strong probability of death or great bodily harm to her; one count of attempted first-degree murder of Calderon; and one count of attempted first-degree murder of Martha. Each elected count alleged defendant personally discharged a firearm during the commission of the offense.

¶ 7 The State filed a motion *in limine* prior to trial seeking to admit other-crimes evidence—proof that defendant was involved in another murder targeting members of the Latin Kings street gang—and evidence of defendant's membership in the Satan Disciples street gang, a neighboring

rival of the Latin Kings.

¶ 8 The State premised its motion to admit other-crimes evidence on proof that defendant believed the occupants of the vehicle he targeted in the instant offense contained members of the Latin Kings gang. The State further maintained the other-crimes evidence would demonstrate that on February 19, 2012, 18 months after the instant offense, defendant was driving a vehicle with several individuals near the border of Latin King and Satan Disciple territories. He flagged down a vehicle containing Latin Kings, and when the vehicle approached, one of the passengers in defendant's vehicle opened fire, killing the driver and injuring a passenger. The State asserted the other-crimes evidence was sufficiently similar to the instant offense because (1) in both instances defendant learned or believed the victims were Latin Kings, (2) both offenses involved shooting at suspected rival Latin Kings situated in vehicles, (3) the shootings occurred on the border of the gangs' territories, and (4) they occurred within 18 months of each other. The State sought to introduce the other-crimes evidence to demonstrate defendant's criminal intent, lack of an innocent frame of mind, *modus operandi*, and the presence of a common scheme or design.

¶ 9 In response, defendant argued the crimes were not sufficiently similar where, during the other offense, he was the driver and was not aware his passenger would fire a handgun. He maintained that although he was the shooter in the instant offense, he was shooting in self-defense. He further maintained that the State would use the other-crimes evidence for the improper purpose of demonstrating his propensity to commit violent acts. After the matter was fully briefed and argued, the circuit court granted the State's motion, finding the other-crimes evidence was relevant for the purposes sought by the State and was additionally relevant to proving knowledge and absence of mistake.

¶ 10 The State also sought to introduce evidence that defendant was a Satan Disciple in order

to demonstrate his motive and common scheme or design. Defendant did not object, as the evidence supported his theory that he was defending himself from the Latin Kings who occupied the vehicle on which he opened fire. Accordingly, the circuit court granted the State's motion.

¶ 11 Defendant subsequently filed a motion to reconsider the admission of the other-crimes evidence, asserting that in light of the circuit court's ruling, he would no longer argue a theory of self-defense. Rather, his theory of defense was that the witnesses would not be able to identify him as the shooter. Defendant argued that since the identity of the shooter was the sole issue, the evidence of the subsequent murder was no longer relevant for the State to prove his intent, lack of an innocent frame of mind, *modus operandi*, or a common scheme or design in the instant offense. Defendant further maintained that he had no basis to object to the State admitting evidence of his gang membership, and acknowledged that such evidence was relevant to the State's theory regarding his motive. The circuit court denied defendant's motion, and the matter proceeded to trial.

¶ 12 B. Trial

¶ 13 At trial, the State introduced the testimony of Martha; Calderon; Armando Matos, defendant's roommate; Teresa Montes, a friend of defendant's sister; Sergeant William Cartagena and Detective Salvador Esparza, who investigated the Alvarado murder; Guadalupe Escobedo, a witness to the murder; Cesar Ramos, a target in the subsequent shooting; Sergeant Russell Egan; Assistant State's Attorney (ASA) Jamie Santini; ASA Lauretta Froelich; and Sergeant Samuel Muniz. The State adduced the following evidence.

¶ 14 On September 10, 2016, Martha was driving to a concert in her red sedan with Alvarado in the front passenger seat and Calderon seated in the backseat behind Martha. The women were driving southbound on Washtenaw Avenue when they observed several men on the corner of

Washtenaw Avenue and 24th Street. As they turned onto 24th Street, one of the individuals on the corner inquired with which gang the women were affiliated. The women responded that they were "a bunch of b***" because none of them were affiliated with a gang. They continued onto 24th Street and suddenly heard several gunshots coming from behind their vehicle. They ducked, and through her driver's side mirror Martha observed a man in the middle of the street, approximately half of a block behind them, firing a handgun in their direction. Calderon did not observe the shooter. At the time of the shooting, the women were wearing jeans and blue or white shirts; none of them were wearing black and gold, which are colors associated with the Latin Kings.

¶ 15 When the shooting ceased, Alvarado stated that she had been shot. Martha proceeded to the emergency room, where Alvarado died of her gunshot wound. Martha then drove to a police station, where she and Calderon viewed a photographic array. Martha identified defendant as the shooter, but Calderon was unable to make an identification. Martha also identified defendant as the shooter in a physical lineup in April 2013, and she identified him as the shooter in court.

¶ 16 According to Armando Matos (Matos), immediately after the shooting defendant ran to his family residence near 23rd Street and Rockwell Street. Matos, who was living with defendant's family, opened the door and observed defendant holding a .40 caliber handgun, a firearm Matos had previously observed in defendant's residence. Defendant indicated the police were on their way and he had to conceal the firearm, so Matos assisted defendant in stashing the handgun underneath the refrigerator. Defendant then proceeded to wash his hands with bleach and rub lotion on his hands to mask the odor from the bleach. Defendant requested that Matos assemble a video game in the living room so when the police arrived, it would give the impression that they were at home when the murder occurred.

¶ 17 Two Chicago police officers arrived at the residence shortly after defendant arrived. They searched the residence but did not find the handgun. After the officers left, defendant removed the handgun and left the residence with the firearm. Defendant later related to Matos what had occurred that evening. According to Matos, defendant informed him that he was at an apartment on 24th Street and Washtenaw Avenue with several individuals when they observed a red sedan occupied by male and female passengers wearing black and yellow clothing. The passengers in the vehicle were shouting "SD killer" and "King love" as they drove past. Defendant believed the occupants of the vehicle were Latin Kings. He was going to shoot at the sedan from the window of the apartment, but he noticed his sister outside near the vehicle and he decided to go outside instead. He and his companions ran outside when they observed the red sedan circling the block and traveling back towards them. Someone waived the vehicle down, and defendant shot at it with the handgun. Teresa Montes confirmed at trial that defendant's sister was outside with her on the corner of 24th Street and Washtenaw Avenue during the shooting.

¶ 18 In May 2012, Guadalupe Escobedo (Escobedo) gave a written statement to the Chicago police which indicated the following. On the evening of the murder, Escobedo was repairing a vehicle on Washtenaw Avenue near 24th Street when he noticed a red vehicle occupied by three women pass by him. He observed defendant run towards the vehicle and shoot at it with a handgun. Defendant's face was not covered and Escobedo was able to clearly observe him. Prior to giving the statement, Escobedo had observed defendant in a lineup and identified him as the shooter. He had known defendant for one year prior to the shooting. Escobedo did not inform police of his knowledge of the murder sooner because he was afraid of what the Satan Disciples might do to him.

¶ 19 At trial, Escobedo recanted his written statement and testified that he arrived on Washtenaw Avenue after the police had arrived. He further testified he did not notice defendant there. He denied having any knowledge of the murder, although he identified his written statement and acknowledged that his signature appeared underneath a photograph of defendant appended to the statement. He additionally testified that he heard multiple gunshots that evening, which caused him to duck into the vehicle he was repairing.

¶ 20 Sergeant William Cartagena (Cartagena) of the Chicago police department testified that he was present during Escobedo's interview and reviewed the written statement with him. Detective Salvador Esparza (Detective Esparza) of the Chicago police department confirmed at trial that in May 2012, Escobedo viewed a lineup and identified defendant as the shooter.

¶ 21 Testimony was also introduced regarding defendant's gang affiliation. Matos testified he and defendant were members of the Satan Disciples street gang, and at the time of the shooting, they both lived with defendant's family near 23rd Street and Rockwell Street, which was in Satan Disciple territory. Matos further testified there was a longstanding rivalry between the Satan Disciples and the Latin Kings. Moreover, the territories controlled by the two gangs shared a border at California Avenue. Matos identified several photographs of defendant's tattoos which represented his affiliation with the Satan Disciples.

¶ 22 The parties then stipulated that if called to testify, Aimee Stevens, an expert in the field of ballistic evidence examination, would testify she examined four discharged cartridge cases from the scene of the Alvarado murder. She would further testify that three of the four cartridge cases had contained .40 caliber bullets, and two of those three cartridge cases were fired from the same firearm; the third cartridge case was fired from a different firearm. Additionally, the fourth cartridge case had contained a nine millimeter bullet that could not have been fired from the

same firearm that the first three bullets had been.

¶ 23 The parties further stipulated that Victor Rivera, a forensic investigator with the Chicago police department, would testify that he collected and inventoried items pertaining to Alvarado, including a blue shirt she was wearing at the time of her murder.

¶ 24 The State also introduced certain other-crimes evidence. Prior to doing so, the trial judge read a jury instruction agreed upon by defense counsel and the State. The instruction stated, "[t]his evidence is being received on the issues of the defendant's intent, motive, common scheme, design, knowledge, and absence of mistake, and may be considered by you only for that limited purpose." The State then adduced the following evidence.

¶ 25 Cesar Ramos (Ramos), Rogelio Cervantes (Cervantes), Jose Barone (Barone) and Alberto Rodriguez (Rodriguez) were all Latin Kings. In February 2012, Cervantes was driving the four men southbound on California Avenue. Ramos was in the front passenger seat, and Barone and Rodriguez were situated in the backseat. They turned westbound onto 25th Street, and Ramos observed a dark colored sedan facing eastbound. The driver and passenger of the eastbound vehicle were displaying signs with their hands indicating they were Latin Kings. Cervantes reversed his vehicle and pulled beside the dark sedan. Ramos had an unobstructed view of the driver. He also observed two individuals in the backseat of the sedan. Cervantes inquired where they were from, then one of the backseat passengers of the dark sedan began firing a handgun in Ramos' direction. Ramos was shot in the shoulder, and Cervantes was shot multiple times. Cervantes died as a result of the gunshot wounds.

¶ 26 Three days after the shooting, Ramos proceeded to a Chicago police station where he viewed a physical lineup and identified defendant as the driver of the dark sedan. He also gave a written statement to police that day, and he later identified a photograph of the driver before the

grand jury. Ramos was taking pain medication for his injury when he spoke to the police, but it did not affect his ability to understand their questions or respond thereto.

¶ 27 At trial, Ramos testified he could not remember many of the facts of the shooting as he was intoxicated that evening and four years had passed since the shooting occurred. As a result, Ramos was impeached multiple times with his grand jury testimony, which he gave in March 2012. Ramos further testified that he was under the influence of alcohol when he spoke to the police and that the officers told him which individual to identify in the physical lineup.

¶ 28 Ramos' testimony was impeached by Chicago police Sergeant Russell Egan (Sergeant Egan), ASA Jamie Santini (ASA Santini), ASA Lauretta Froelich (ASA Froelich), and Chicago police Sergeant Samuel Muniz (Sergeant Muniz). Sergeant Egan testified that he was assigned to the Cervantes murder and that evening he observed the scene where the shooting occurred. He further testified that three days after the shooting, he observed Ramos view a physical lineup and identify defendant as the driver of the vehicle from which he was shot. According to Sergeant Egan, Ramos did not appear to be under the influence of alcohol. ASA Santini testified he was assigned to the Cook County grand jury. He identified the transcript of Ramos' grand jury testimony which was admitted into evidence and certain portions were published to the jury that were consistent with the statements introduced during Ramos' trial testimony. Ramos' grand jury testimony further indicated that the Chicago police made no threats or promises to him, he was not under the influence of alcohol when he spoke to the police, and he signed an advisory form prior to viewing the physical lineup which indicated he understood that (1) the suspect may or may not be in the lineup, (2) he was not required to make an identification, and (3) he was not supposed to assume the individual showing him the lineup knew which individual was the suspect.

¶ 29 ASA Froelich testified she interviewed Ramos three days after he was shot. She identified the written statement Ramos provided that day which was admitted into evidence and published to the jury. His written statement was consistent with his grand jury testimony. Sergeant Muniz testified that he was the evidence technician who processed the scene of the Cervantes murder. He viewed and described a videotape and photographs he took of the scene, which were admitted into evidence.

¶ 30 The State then rested. Defendant moved for a directed verdict, which was denied. Defendant elected not to testify and did not present any additional evidence. Following closing arguments, the jury found defendant guilty of two counts of first-degree murder and two counts of attempted first-degree murder. The jury further found defendant personally discharged a firearm during the commission of the offenses. The two first-degree murder charges merged as they were predicated on defendant (1) intentionally killing Alvarado, and (2) knowing that his actions created a strong probability of death or great bodily harm to her, respectively.

¶ 31 C. Sentencing

¶ 32 At the sentencing hearing, the State presented evidence in aggravation. Officer Kathy Schmidt of the Chicago police department testified that in May 2010, she was working undercover and purchased two bags of crack cocaine from defendant. Defendant was 19 years old at that time. The State further argued defendant had twice been convicted of gang loitering, once when he was 17, and once when he was 20. Defendant's presentence investigation (PSI) report additionally indicated he had been convicted for the unlawful possession of a handgun when he was 18, aggravated unlawful use of a weapon when he was 18, possession of cannabis when he was 20, and twice for reckless conduct, when he was 17 and 19. The State requested that the trial judge impose a sentence in excess of the 71-year minimum.

¶ 33 In mitigation, defendant argued he came from a broken home, had a religious upbringing, had not misbehaved in prison, and had successfully completed court supervision. He further argued the letters provided by his family members indicated he performed good deeds for them. After considering the factors in aggravation and mitigation, the circuit court found defendant had no rehabilitative potential and sentenced him to natural life imprisonment without the possibility of parole for first-degree murder involving his personal discharge of a firearm, and 30 years' imprisonment for each count of attempted murder to run concurrently with each other and consecutive to the natural life sentence. Defendant's postsentencing motion was denied. This appeal followed.

¶ 34 II. ANALYSIS

¶ 35 On appeal, defendant argues (1) the circuit court abused its discretion by admitting other-crimes evidence, (2) the circuit court abused its discretion by admitting evidence of his gang membership, (3) he was denied effective assistance of counsel where his attorney failed to object to the admission of defendant's gang affiliation and failed to call an eyewitness expert to testify regarding the reliability of eyewitness identification, and (4) his life sentence was excessive and violates the United States and Illinois Constitutions. We address each contention in turn below.

¶ 36 A. Admission of Other-Crimes Evidence

¶ 37 On appeal, defendant challenges the circuit court's ruling allowing the State to present evidence to the jury of the Cervantes murder. Specifically, defendant raises individual arguments regarding each of the purposes for which the other-crimes evidence was introduced: to prove defendant's intent, knowledge, absence of mistake, motive, common scheme or design, and *modus operandi*. Defendant further maintains the other-crimes evidence was more prejudicial than probative because it was impermissibly extensive. We conclude the circuit court

did not abuse its discretion when it admitted the other-crimes evidence for the purposes of proving defendant's intent, knowledge, motive, and common scheme or design. Although the circuit court did err when it admitted that evidence for the purposes of proving absence of mistake and defendant's *modus operandi*, we conclude that error was harmless and therefore does not warrant reversal of defendant's conviction. See *People v. Jones*, 156 Ill. 2d 225, 240 (1993). We further find the probative value of the other-crimes evidence was not substantially outweighed by its prejudicial effect.

¶ 38 It is well established that evidence of other offenses is not admissible for the purpose of demonstrating a defendant's propensity to commit crime. *People v. Illgen*, 145 Ill. 2d 353, 364 (1991). Such evidence, however, may be admitted if it is relevant for any other purpose, such as to establish motive, intent, identity, the existence of a common plan or design, or *modus operandi*. *People v. Hansen*, 313 Ill. App. 3d 491, 500 (2000). In order to be introduced, the other-crimes evidence must have some threshold similarity to the crime charged. *Illgen*, 145 Ill. 2d at 372. The defendant need not have been convicted of the other offense. *People v. Null*, 2013 IL App (2d) 110189, ¶ 47. Even when relevant for a permissible purpose, however, the evidence should not be admitted if its probative value is substantially outweighed by its prejudicial effect. *People v. Moss*, 205 Ill. 2d 139, 156 (2001).

¶ 39 A circuit court's ruling on a motion to admit other-crimes evidence is reviewed for an abuse of discretion. *People v. Spyres*, 359 Ill. App. 3d 1108, 1113 (2005). The circuit court abuses its discretion only when its decision is arbitrary, fanciful, or unreasonable, or no reasonable person would reach the same conclusion. *Id*.

¶ 40 Defendant first contends that the Cervantes murder was insufficiently similar to the Alvarado murder for purposes of demonstrating motive, intent, or knowledge. Typically, mere

general areas of similarity between the crime charged and the other-crimes evidence is sufficient to support admissibility. *People v. Turner*, 373 Ill. App. 3d 121, 127 (2007). Illinois courts have observed that some dissimilarities will always exist between independent offenses (*Illgen*, 145 Ill. 2d at 373), and the existence of some differences does not defeat the admissibility of other-crimes evidence (*People v. Ross*, 2018 IL App (2d) 161079, ¶ 173).

¶ 41 Here, the record demonstrates numerous similarities existed between the Alvarado murder and the Cervantes murder: (1) defendant believed the victims were members of the rival Latin Kings gang; (2) the murder weapon was a handgun; (3) the firearm was discharged into a vehicle; (4) the occupants of the target vehicle were not provoking defendant; (5) the shootings occurred near the border of Satan Disciple and Latin King territories; and (6) the shootings occurred in the evening. Both crimes were related to the rivalry between the Satan Disciples and Latin Kings. Moreover, the Cervantes murder was only several blocks away from, and eighteen months after, the Alvarado murder. See *People v. Raymond*, 404 Ill. App. 3d 1028, 1047 (2010) (evidence of a prior crime committed four years earlier was not too remote in time); *People v. Brown*, 199 Ill. App. 3d 860, 863, 869, 876 (1990) (evidence of prior murder committed five years earlier was not too remote). We find these many general areas of similarity sufficient to support admissibility of the Cervantes murder to prove defendant's intent and knowledge in the crime charged. See *Ross*, 2018 IL App (2d) 161079, ¶ 173; *Turner*, 373 Ill. App. 3d at 127.

¶ 42 Defendant next argues the Cervantes murder was irrelevant to prove his motive because the State produced weak evidence that the instant crime was gang related. Specifically, defendant relies on Martha and Calderon's testimonies that they were not members of a gang and they were merely attempting to pass through the intersection of 24th Street and Washtenaw Avenue.

¶ 43 " 'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ill. R. Evid. 401 (eff. Jan. 1, 2011). Moreover, for evidence of a defendant's motive to be competent, "it must, at least to a slight degree, tend to establish the existence of the motive relied upon or alleged. [Citations]. Thus, when the State undertakes to prove facts which the State asserts constitute a motive for the crime charged, it must be shown that the accused knew of those facts." *People v. Smith*, 141 Ill. 2d 40, 56 (1990).

¶ 44 Defendant contends Martha and Calderon's testimonies that they were not members of a gang and stated as much to the individuals on the corner of 24th Street and Washtenaw Avenue demonstrates the crime was not gang related. The record, however, indicates defendant related to Matos that he observed passengers in the victims' vehicle wearing colors associated with the rival Latin Kings gang and they were insulting the Satan Disciples. This evidence demonstrates that, notwithstanding Martha and Calderon's testimonies, defendant believed there were Latin Kings in the vehicle, and the shooting was thus gang related. See *id*. Moreover, the Cervantes murder tended to make more probable the fact that defendant had a motive to kill Latin Kings. See *id*.; Ill. R. Evid. 401 (eff. Jan. 1, 2011). The circuit court therefore did not abuse its discretion by admitting the other-crimes evidence to prove defendant's motive and intent. See *Spyres*, 359 Ill. App. 3d at 1113.

¶ 45 Defendant next challenges the admissibility of the Cervantes murder to demonstrate a common scheme or design, arguing that the other crime was irrelevant and insufficiently similar to the crime charged. Generally, where evidence of another crime is offered to prove a common design, there must be a higher degree of similarity between the two offenses. *Illgen*, 145 Ill. 2d at 372-73. A common scheme or design refers to a criminal scheme of which the crime charged

is only a part. *Spyres*, 359 Ill. App. 3d at 1112. The defendant's state of mind or purpose in committing the offenses, however, is more significant than the factual similarities. *Hansen*, 313 Ill. App. 3d at 503-505 (citing *Jones*, 156 Ill. 2d at 239-40, and *People v. Tipton*, 207 Ill. App. 3d 688, 696 (1990)).

¶ 46 Here, the similarities described above, including evidence that defendant believed the victims were Latin Kings, a handgun was discharged into a vehicle, and that the shootings occurred near the border of the gangs' territories, demonstrated defendant's purpose and criminal scheme of identifying and shooting Latin Kings driving near the border of Latin King and Satan Disciple territories. See *Spyres*, 359 Ill. App. 3d at 1112-13; *Hansen*, 313 Ill. App. 3d at 503-505. The crime charged fit into the scheme as it was a response to defendant's belief that Latin Kings were driving in Satan Disciple territory. Accordingly, the circuit court did not abuse its discretion by admitting the other-crime evidence to demonstrate a common design. See *id*.

¶ 47 Defendant next contends the other-crimes evidence was irrelevant to prove *modus operandi*.[1] *Modus operandi* refers to a pattern of criminal behavior so distinctive that separate crimes are recognized as the handiwork of the same individual. *People v. Wilson*, 214 Ill. 2d 127, 140 (2005). *Modus operandi* is relevant to prove the identity of the perpetrator or that the defendant committed the crime charged by allowing the jury to reasonably infer that he committed one offense from evidence of the other. *People v. Hall*, 235 Ill. App. 3d 418, 433 (1992). Both crimes, however, must share peculiar and distinctive features so as to earmark both crimes as defendant's handiwork. *People v. Knight*, 309 Ill. App. 3d 224, 228 (1999). Although the crimes need not be identical, the distinctive features must not be common to most offenses of

[1] Initially, we observe that the jury instructions provided by the parties did not state the other-crimes evidence was received on the issue of defendant's *modus operandi*. The State, however, briefly referenced the Cervantes murder as evidence of defendant's *modus operandi* during closing argument. We will therefore review the propriety of the evidence for that purpose.

that type. *Hansen*, 313 Ill. App. 3d at 506-507.

¶ 48 The other-crime evidence here did not share the type of distinct features with the crime charged that make it probative of defendant's *modus operandi*. See *People v. Haley*, 2011 IL App (1st) 093585, ¶¶ 58-59 (in both instances the crimes occurred during the early morning hours in the same place; the defendant was drinking alcohol the night before; and he pushed fishermen from behind into the water before laughing and fleeing); *Knight*, 309 Ill. App. 3d at 228. In the Cervantes murder, defendant drove the shooter and lured the victims by displaying Latin King signs with his hands. In the crime charged, defendant was on foot and shot towards the back of a vehicle that he believed contained Latin Kings. Although both crimes involved a gang-related shooting and a handgun, the record demonstrates that the circumstances of the offenses do not share distinctive features, such as those exemplified in *Haley*, so as to earmark both crimes as defendant's handiwork. See *Haley*, 2011 IL App (1st) 093585, ¶ 58; *Knight*, 309 Ill. App. 3d at 228. Accordingly, the circuit court's decision to admit evidence of the Cervantes murder to prove defendant's *modus operandi* was arbitrary and an abuse of discretion. See *Spyres*, 359 Ill. App. 3d at 1113; *Knight*, 309 Ill. App. 3d at 228.

¶ 49 Defendant further maintains the other-crimes evidence was irrelevant to prove an absence of mistake because he did not advance a theory that he mistakenly shot at the vehicle. We agree. The admission of other-crimes evidence to demonstrate an absence of mistake arises when the defendant claims that his otherwise criminal acts were the result of a mistake. *People v. Lenley*, 345 Ill. App. 3d 399, 408-409 (2003). Here, there was no claim of mistake, and the evidence was improperly admitted to help prove an absence of that claim. See *id*.

¶ 50 Nevertheless, the inadmissibility of the other crime to prove absence of mistake or *modus operandi* does not compel reversal. *Jones*, 156 Ill. 2d at 240. "Other-crimes evidence that is

admissible for one reason is not affected by inadmissibility for another reason. [Citation]. When jurors receive a limiting instruction that permits them to consider evidence for a number of reasons, and one of those reasons is determined on appeal to be improper, judgment of conviction must be affirmed despite the overly broad instruction." *Id.* Because the other-crimes evidence was admissible to prove defendant's intent, knowledge, motive, and common design, the circuit court's overbroad instruction concerning absence of mistake and *modus operandi* was harmless. Moreover, because the evidence against defendant was overwhelming and as long as there is a valid reason to admit the evidence the error is harmless. *Id.*; see *Spyres*, 359 Ill. App. 3d at 1115 (judgment affirmed where the other-crimes evidence was admitted for at least one proper purpose).

¶ 51 Finally, defendant contends the other-crimes evidence was so extensive that it became the focal point of the trial and its prejudicial effect outweighed its probative value. As stated above, even relevant evidence may be excluded if its probative value is substantially outweighed by its prejudicial effect. *Moss*, 205 Ill. 2d at 156. Moreover, evidence of another offense must not become the focal point of the trial. *People v. Bedoya*, 325 Ill. App. 3d 926, 938 (2001). The circuit court should not permit a "mini-trial" of the other offense, but should allow only that which is necessary to "illuminate the issue for which the other crime was introduced." *People v. Nunley*, 271 Ill. App. 3d 427, 432 (1995). Whether the probative value of the evidence is outweighed by its prejudicial effect is left to the sound discretion of the circuit court, and we will not reverse the circuit court's determination absent an abuse of that discretion. *Illgen*, 145 Ill. 2d at 375.

¶ 52 Defendant relies primarily on *Bedoya*, wherein the defendant was charged with first-degree murder after shooting the victim at close range during a struggle. *Bedoya*, 325 Ill. App.

3d at 927. At trial, the State presented seven witnesses, live or by stipulation, who testified regarding the defendant's other crimes—shooting at three buildings less than an hour prior to the murder—to prove the defendant's intent in the crime charged. *Id*. at 938, 940. The circuit court precluded the defendant from apprising the jury that he had been acquitted of the charges stemming from the prior shootings. *Id*. at 928. Moreover, the circuit court failed to give a limiting instruction for the other-crimes evidence until the close of the final arguments. *Id*. at 942.

¶ 53 On appeal, the court found the evidence of the defendant's prior shootings was irrelevant to whether or not he intentionally shot the victim, and was therefore admitted in error because it was admitted for no valid purpose. *Id*. at 939-40. The court further determined that even if the evidence was slightly relevant, the danger of unfair prejudice was compounded by multiple factors which outweighed any probative value. *Id*. at 940-43. These factors included the facts that (1) the seven witnesses and their identification of multiple photographs, bullets, and bullet casings related to the other crimes amounted to an impermissible "trial within a trial," (2) the evidence "served no purpose other than to inflame the jury," and did not resolve the fundamental factual question of whether defendant or his companion fired the handgun at the buildings, a question at issue at trial, (3) the State repeatedly referenced the other-crimes evidence during closing arguments, (4) the circuit court failed to timely provide a limiting instruction to the jury, and (5) the circuit court failed to apprise the jury that the defendant was acquitted of the charges relating to the prior shootings. *Id*.

¶ 54 The court made clear that the other-crimes evidence was unfairly prejudicial as a result of these multiple factors. *Id*. (weighing the slight probative value of the evidence compared to "the presentation, in excruciating detail, of the other offense evidence, the prosecution argument

concerning the other offenses, the trial court's failure to give a timely limiting instruction, and the trial court's refusal to tell the jury [the defendant] had been acquitted of the charges."). The court in *Bedoya* relied on *Brown*, 319 Ill. App. 3d 89, *People v. Thigpen*, 306 Ill. App. 3d 29 (1999), *People v. Bennett*, 281 Ill. App. 3d 814 (1996), and *Nunley*, 271 Ill. App. 3d 427, in its analysis of whether the other-crimes evidence amounted to a mini-trial. *Bedoya*, 325 Ill. App. 3d at 940-41. We observe that in these cases, the excessive other-crimes evidence was deemed prejudicial as a result of multiple additional errors at trial (*Brown*, 319 Ill. App. 3d at 97-101, *Bennett*, 281 Ill. App. 3d at 826), or because the evidence was unrelated to and more grotesque than the crime at issue (*Thigpen*, 306 Ill. App. 3d at 38, *Nunley*, 271 Ill. App. 3d at 432).

¶ 55 Here, notwithstanding defendant's claim that the other-crimes evidence was extensive, none of the additional factors identified in *Bedoya* were present. See *Bedoya*, 325 Ill. App. 3d at 940-43. First, evidence of the Cervantes murder was relevant to prove defendant's intent, knowledge, motive, and common design, and therefore served a purpose as it was not offered to inflame the jury. See *id*. at 940-41. Second, the record reveals the State scarcely referenced the other-crimes evidence during closing argument. See *id*. at 941-42. Third, the circuit court timely provided a limiting instruction prior to the introduction of the other-crimes evidence informing the jury that the evidence was received on the issues of defendant's intent, motive, common scheme or design, knowledge, and absence of mistake, and was to be considered only for that limited purpose. See *id*. at 942. Finally, the circuit court did not preclude the defense from apprising the jury of pertinent information pertaining to the other-crimes evidence. See *id*. at 942-43. *Bedoya* is therefore inapposite. See *id*. at 940-43. Moreover, the other-crimes evidence here was not far more grotesque than the crime charged, as in *Thigpen* and *Nunley*. *Thigpen*, 306 Ill. App. 3d at 38; *Nunley*, 271 Ill. App. 3d at 432.

¶ 56 We acknowledge that on its face evidence of the Cervantes murder may have appeared cumulative as a result of the State's introduction of multiple witnesses. Such testimony was warranted, however, under the particular circumstances of this case. "When the State seeks admission of other-crimes evidence, it must first show that a crime took place and that the defendant committed it or participated in its commission." *People v. Pikes*, 2013 IL 115171, ¶ 15. Here, the State sought to introduce evidence of the Cervantes murder and defendant's participation through the trial testimony of Ramos. Ramos, however, did not recall many details of that evening. In addition, he testified he was intoxicated when he gave a written statement to police and he was pressured by officers to identify defendant in a lineup. His testimony called into question defendant's involvement in the Cervantes murder and Ramos' prior identification of defendant. The State therefore sought to introduce additional testimony to impeach Ramos, demonstrate that a crime took place, and prove Ramos was not intoxicated or coerced when he identified defendant as a participant.

¶ 57 Moreover, Sergeant Muniz, who testified regarding his investigation and the related photographs, gave the shortest testimony. We further observe that at trial defense counsel failed to object to the admission of this evidence, given its context. The relevance of the other-crimes evidence, the State's minimal reference to such evidence during closing argument, and the circuit court's timely limiting instruction all reduced the risk of unfair prejudice. *Illgen*, 145 Ill. 2d at 376 (limiting instruction substantially reduced any prejudicial effect of the prior-crime evidence); see *Bedoya*, 325 Ill. App. 3d at 940-42. We cannot say as a matter of law that the probative value of the other-crimes evidence was substantially outweighed by the danger of unfair prejudice. Accordingly, the circuit court did not abuse its discretion by failing to limit evidence of the Cervantes murder. See *Illgen*, 145 Ill. 2d at 375; *Brown*, 319 Ill. App. 3d at 95.

¶ 58 B. Admission of Defendant's Gang Membership

¶ 59 Defendant contends the circuit court abused its discretion by admitting evidence of his gang membership to prove motive. Initially, we point out that defense counsel acquiesced to the State's use of gang-related evidence and conceded it was relevant to the State's theory regarding defendant's motive. Defendant, however, argues that his attorney's failure to object to the evidence amounted to ineffective assistance of counsel. He further requests that we review the propriety of the gang-related evidence for plain error, arguing the State failed to present sufficient evidence that the crime charged was gang related. Defendant additionally maintains the evidence was more prejudicial than probative where it served no purpose other than to inflame the jury. We need not review defendant's claim for plain error, however, because we find that no error occurred. See *People v. Lewis*, 234 Ill. 2d 32, 43 (2009).

¶ 60 Evidence that a defendant is a member of a gang must be admitted with care because gangs are regarded with considerable disfavor by our society. *People v. Strain,* 194 Ill. 2d 467, 477 (2000). Evidence of gang membership "is only admissible where there is sufficient proof that such membership or [gang-related] activity is related to the crime charged." *Smith*, 141 Ill. 2d at 58. Moreover, evidence of gang membership is admissible if it qualifies as relevant evidence and its probative value is not substantially outweighed by its prejudicial effect. *People v. Johnson,* 208 Ill. 2d 53, 102 (2003); see also *Smith,* 141 Ill. 2d at 58 (evidence indicating the defendant was in a gang is admissible to demonstrate a motive). "Relevant evidence is defined as evidence having any tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." *People v. Gonzalez,* 142 Ill. 2d 481, 487-88 (1991). We review the circuit court's evidentiary rulings with respect to gang-related evidence for an abuse of discretion. *Johnson,* 208 Ill. 2d at 102.

¶ 61 Initially, we observe that defendant's argument that the State failed to produce sufficient evidence indicating the crime charged was gang-related is nearly identical to his previous argument that the other-crimes evidence was unrelated to prove motive. As we explained previously, the evidence demonstrated defendant believed there were members of the rival Latin Kings street gang in Calderon's vehicle. Although Martha and Calderon testified they were not affiliated with a gang and related as much to the individuals at the intersection of 24th Street and Washtenaw Avenue, there was no evidence that defendant heard these statements. Accordingly, we find the State produced sufficient evidence that defendant's membership in the Satan Disciples was related to the crime charged where it provided uncontradicted evidence that (1) defendant believed there were Latin Kings in Martha's vehicle, (2) there was a rivalry between the Latin Kings and the Satan Disciples, and (3) defendant was involved in a subsequent murder which targeted Latin Kings. See *Smith*, 141 Ill. 2d at 58.

¶ 62 Defendant contends, however, that the presentation of his gang-related tattoos and Escobedo's testimony that he was afraid of the gangs served no purpose other than to inflame the jury. We do not find this argument persuasive. The State sought to introduce photographs of defendant's tattoos to prove that he was, in fact, a member of the Satan Disciples. See *People v. Williams*, 262 Ill. App. 3d 808, 820 (1994) (the bare assertion of a lay witness regarding gang membership is not adequate). Defendant's gang membership was relevant to establish his motive to cause harm to the Latin Kings, a gang which had an ongoing feud with the rival Satan Disciples. See *Gonzalez*, 142 Ill. 2d at 487-88; *Smith*, 141 Ill. 2d at 58.

¶ 63 Escobedo's testimony that he was afraid of what the gangs might do to him if he spoke to the police was relevant and necessary to explain why he declined to inform police about the Alvarado murder for over one year. See *Gonzalez*, 142 Ill. 2d at 487-88. Moreover, it was

relevant to explain why he recanted his written statement and declined to testify against defendant at trial. See *id*. The challenged testimony made Escobedo's written statement detailing his eyewitness observations and identification of defendant more probable than not. See *id*. After reviewing the record, we find the probative value of this relevant gang-related evidence was not substantially outweighed by its prejudicial effect, and the circuit court did not abuse its discretion by admitting it. See *Johnson*, 208 Ill. 2d at 102. Furthermore, as the evidence was properly admitted, defense counsel cannot be deemed ineffective for failing to object. *People v. Edwards*, 195 Ill. 2d 142, 165 (2001); *People v. Lucious*, 2016 IL App (1st) 141127, ¶ 33.

¶ 64 C. Counsel's Failure to Call an Eyewitness Expert

¶ 65 Defendant argues he was denied effective assistance of counsel where his attorney failed to call an eyewitness expert to testify regarding the reliability of eyewitness identification.

¶ 66 A defendant's claim that trial counsel failed to render effective assistance is governed by a two-pronged test: the defendant must establish that (1) counsel's performance fell below an objective standard of reasonableness and (2) the defendant was prejudiced by that performance. *People v. Brown*, 2017 IL 121681, ¶ 25. Prejudice is a reasonable probability that the result of the proceeding would have been different absent counsel's error, and a reasonable probability is in turn a probability sufficient to undermine confidence in the outcome of the proceeding. *People v. Peterson*, 2017 IL 120331, ¶ 79. The decision whether to call a particular witness is a matter of trial strategy left to counsel's discretion, and thus generally not a proper basis for an ineffectiveness claim. *Id.* ¶ 80. Representation is not constitutionally defective unless the strategy was so unsound that counsel failed to conduct meaningful adversarial testing of the State's case, or so irrational that no reasonably effective counsel in similar circumstances would

use that strategy. *Id.* A strategy is not unreasonable merely because it proved unsuccessful. *Id.* ¶ 88.

¶ 67 In arguing defense counsel's performance fell below an objective standard of reasonableness, defendant places great weight on *People v. Lerma*, 2016 IL 118496. Our supreme court in *Lerma* found that the circuit court abused its discretion in excluding a defense expert witness on the reliability of eyewitness identification where the only evidence against the defendant was identification by two eyewitnesses, one of whom did not testify and was not subject to cross-examination. *Id.* ¶¶ 25-26. The *Lerma* court found that "research concerning eyewitness identification[ ] *** is well settled, well supported, and in appropriate cases a perfectly proper subject for expert testimony." *Id.* ¶ 24. It found an abuse of discretion in "the trial court denying defendant's request to present relevant and probative testimony from a qualified expert that speaks directly to the State's only evidence against him, and doing so for reasons that are both expressly contradicted by the expert's report and inconsistent with the actual facts of the case," which rose "to the level of both arbitrary and unreasonable to an unacceptable degree." *Id.* ¶ 32.

¶ 68 The issue in *Lerma*, however—whether the circuit court abused its discretion in rejecting proffered expert testimony—is manifestly different than the issue presented here, *i.e.*, whether defense counsel's performance fell below an objectively reasonable standard based on the failure to call an expert witness at trial. The finding that "research concerning eyewitness identification[ ] *** is well settled, well supported, and in appropriate cases a perfectly proper subject for expert testimony" (*Id.* ¶ 24) does not, standing alone, support the conclusion that trial counsel here was *per se* ineffective for not presenting such expert testimony or that expert testimony is required in every case. For example, counsel is entitled to consider as a matter of

trial strategy that an eyewitness expert for the defense will likely be rebutted by an eyewitness expert for the State, which would highlight and bolster the accuracy of the eyewitness identification. See *People v. Macklin*, 2019 IL App (1st) 161165, ¶ 39.

¶ 69 In any event, the argument that defense counsel failed to conduct meaningful adversarial testing of the State's case is refuted by counsel's extensive cross-examination and argument at trial. The argument is further refuted by defense counsel's pretrial motion to suppress the lineup identification testimony of Escobedo, motion in opposition to the admission of other-crimes evidence, motion to reconsider the admission, and motion to timely give a limiting instruction to the jury regarding other-crimes evidence. Moreover, defense counsel requested and was granted jury instructions addressing the factors that can negatively affect eyewitness identification. Furthermore, at least one of the factors that defendant argues an eyewitness expert would have testified to—whether the offender was a stranger—would have weighed in favor of Escobedo's identification. Accordingly, defendant has failed to demonstrate that counsel's strategic decision in this case amounted to unreasonable performance or a failure to conduct meaningful adversarial testing of the State's case. See *Peterson*, 2017 IL 120331, ¶ 80.

¶ 70 Although the lack of objectively unreasonable performance by trial counsel is dispositive (see *People v. Enis*, 194 Ill. 2d 361, 377 (2000)), we also reject defendant's contention that he was prejudiced by counsel's failure to call an expert. Defendant's argument is premised on his claim that Martha's identification was central to the State's case. Contrary to defendant's contention, the record demonstrates the State's evidence also included Escobedo's additional eyewitness identification, Matos' testimony of defendant's confession to him, and evidence of the Cervantes murder, which proved defendant's intent, knowledge, motive, and common design in the crime charged. Given the extent of the State's evidence, we do not find a reasonable

probability that the presentation of an eyewitness expert would have had any impact on the outcome of the proceedings. See *Brown*, 2017 IL 121681, ¶ 25; *Peterson*, 2017 IL 120331, ¶ 79. Accordingly, defendant has failed to demonstrate prejudice and establish he was denied effective assistance of counsel. *Id*.

¶ 71 D. Defendant's Sentence

¶ 72 Defendant raises three challenges to his life sentence. He maintains his sentence violates the eighth amendment of the United States Constitution (U.S. Const., amend. VIII) and the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11), and is excessive.

¶ 73 We first review defendant's constitutional claims. A constitutional challenge is a legal question that we review *de novo*. *People v. Vega*, 2018 IL App (1st) 160619, ¶ 52. *De novo* consideration entails performing the same analysis that the trial judge would perform. *People v. Tyler*, 2015 IL App (1st) 123470, ¶ 151.

¶ 74 The eighth amendment prohibits "cruel and unusual punishments." U.S. Const., amend. VIII. Defendant's eighth amendment challenge relies on United States Supreme Court decisions holding that the amendment protects juvenile offenders from capital punishment or mandatory life imprisonment without parole. *Miller v. Alabama*, 567 U.S. 460, 489 (2012); *Graham v. Florida*, 560 U.S. 48, 82 (2010); *Roper v. Simmons*, 543 U.S. 551, 578 (2005). These holdings were grounded in the Court's concern, based on scientific research about adolescent brain development, that juveniles lack maturity, are more vulnerable to bad influences, and are more amenable to rehabilitation. *Roper*, 543 U.S. at 569-70. The Court, however, drew a line between juveniles and adults at the age of 18 years; while it acknowledged that the line was arbitrary, it "must be drawn." *Id*. at 574; see also *Miller*, 567 U.S. at 465; *Graham*, 560 U.S. at

74-75; *People v. Harris*, 2018 IL 121932, ¶¶ 56, 60-61. As defendant was 20 years old at the time of the murder, he falls on the adult side of that line. Accordingly, the eighth amendment does not protect defendant from a life sentence and we reject his challenge on this ground. *Id.*

¶ 75 Defendant next contends his life sentence without the possibility of parole violates the proportionate penalties clause of the Illinois Constitution in light of the clause's emphasis on restoring offenders to useful citizenship. He urges this court to remand the matter for a new sentencing hearing so the circuit court may apply the sentencing factors that the Supreme Court applied to juveniles in *Miller*, 567 U.S. 460.

¶ 76 The Illinois Constitution provides, "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. The proportionate penalties clause provides a limitation on penalties beyond those afforded by the eighth amendment. *People v. Clemons*, 2012 IL 107821, ¶ 39. Defendant may demonstrate a violation of this clause if his sentence is "cruel, degrading, or so wholly disproportionate to the offense committed as to shock the moral sense of the community." (Internal quotation marks omitted.) *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005).

¶ 77 Defendant's claim is an as-applied challenge. He contends that, as applied to his specific circumstances, the sentencing statutes that allow the trial judge, in his discretion, to impose a life sentence without the possibility of parole violate the Illinois Constitution. All as-applied constitutional challenges are, by definition, dependent on the specific facts and circumstances of the individual raising the challenge. *Harris*, 2018 IL 121932, ¶ 39. The record must therefore be sufficiently developed in terms of those facts and circumstances for purposes of appellate review. *People ex rel. Hartrich v. 2010 Harley-Davidson*, 2018 IL 121636, ¶ 31.

¶ 78 Defendant relies on *People v. Harris*, 2016 IL App (1st) 141744, ¶¶ 31, 54, 58, in which the court held the 18-year-old defendant's aggregate, mandatory *de facto* life sentence violated the proportionate penalties clause, and *People v. House*, 2015 IL App (1st) 110580, ¶¶ 89, 101-102, in which the court held the 19-year-old defendant's mandatory life sentence based on the accountability statute violated the proportionate penalties clause.

¶ 79 The court's holding in *Harris*, however, was reviewed and reversed by our supreme court, and the appellate court was directed to vacate its judgment in *House* and consider the effect of *Harris*. *Harris*, 2018 IL 121932; *People v. House*, No. 122134 (Ill. Nov. 28, 2018). Our supreme court in *Harris* determined that because the defendant failed to raise his as-applied challenge in the circuit court, an evidentiary hearing was not held, the trial court did not make the necessary findings of fact on the defendant's specific circumstances, and accordingly, there was not a sufficiently developed evidentiary record on the as-applied constitutional challenge. *Harris*, 2018 IL 121932, ¶ 40. The court referenced its decision in *People v. Thompson*, 2015 IL 118151, wherein " 'the defendant *** maintained that the evolving science on juvenile maturity and brain development highlighted in *Miller* applied not only to juveniles but also to young adults like himself between the ages of 18 and 21. [Citation.] We rejected that claim because the record contained 'nothing about how that science applies to the circumstances of defendant's case, the key showing for an as-applied constitutional challenge.' We stated the trial court was the most appropriate tribunal for such factual development.' " *Harris*, 2018 IL 121932, ¶ 45 (quoting *People v. Holman*, 2017 IL 120655, ¶ 30 (referencing *Thompson*, 2015 IL 118151)). The record in *Harris* included only basic information about the defendant, primarily from the PSI report. *Id*. ¶46. The defendant's claim was therefore premature, and was more appropriate for a postconviction proceeding (725 ILCS 5/122-1 *et seq*. (West 2016)) or a petition seeking

relief from a final judgment pursuant to section 2-1401 of the Code of Civil Procedure (735 ILCS 5/2-1401 (West 2016)). *Id*. ¶¶ 46, 48.[2]

¶ 80 Defendant's as-applied challenge here is analogous. Although he raised a vague challenge based on the proportionate penalties clause in the circuit court, an evidentiary hearing was not held and the circuit court did not make the requisite factual findings on defendant's specific circumstances. See *id*. ¶ 40. As in *Harris*, the record here contains only basic information about defendant, primarily from his PSI. See *id*. ¶ 46. Because we do not have a sufficiently developed evidentiary record containing "evidence about how the evolving science on juvenile maturity and brain development that helped form the basis for the *Miller* decision applies to defendant's specific facts and circumstances," defendant's claim is premature. *Id*. ¶ 46. Accordingly, we decline to remand this matter for resentencing. See *id*. ¶¶ 35-48.

¶ 81 Defendant's final argument on appeal is that the circuit court abused its discretion in imposing a life sentence. He contends the circuit court failed to consider his youth and disregarded Illinois' constitutional requirement that rehabilitation be an objective of any sentence.

¶ 82 In fashioning a sentence, the circuit court must consider all of the factors in mitigation and aggravation (*People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 27), and the particular circumstances of each case (*People v. Fern*, 189 Ill. 2d 48, 53 (1999)). We presume the circuit court considered all of the relevant factors before it, and without affirmative evidence that the sentencing court failed to consider evidence in mitigation, that presumption cannot be overcome. *McWilliams*, 2015 IL App (1st) 130913, ¶ 27. Reviewing courts treat sentencing decisions

[2] We acknowledge that on remand, the court in *People v. House*, 2019 IL App (1st) 110580-B, ¶ 32, held the defendant's life sentence violated the proportionate penalties clause where his sentence was mandatory and was imposed pursuant to the accountability statute (the defendant was not the actual shooter in the crime charged). Moreover, his claim was brought pursuant to a postconviction petition, as suggested by our supreme court in *Harris*, 2018 IL 121932, ¶ 48. *House*, 2019 IL App (1st) 110580-B, ¶ 32.

within the statutory range with great deference. *People v. Hill*, 408 Ill. App. 3d 23, 29 (2011). We defer to the circuit court's judgment on sentencing because the lower court, " 'having observed the defendant and the proceedings, has a far better opportunity to consider [sentencing] factors than the reviewing court, which must rely on the 'cold' record.' " *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010) (quoting *Fern*, 189 Ill. 2d at 53).

¶ 83 We may reduce a sentence only when the circuit court abused its discretion. *People v. Streit*, 142 Ill. 2d 13, 19 (1991). The circuit court abuses its discretion when its decision is "fanciful, arbitrary, or unreasonable to the degree that no reasonable person would agree with it." *People v. Ramos*, 353 Ill. App. 3d 133, 137 (2004). We may not reverse defendant's sentence merely because we would have weighed the factors in aggravation and mitigation differently. *Id.* Nor will we find that a minimum sentence is necessarily warranted simply due to the existence of some mitigating factors. *People v. Flores*, 404 Ill. App. 3d 155, 158 (2010). Moreover, the existence of mitigating factors does not preclude imposition of the maximum sentence. *People v. Pippen*, 324 Ill. App. 3d 649, 652 (2001).

¶ 84 Under section 5-4.5-20 of the Unified Code of Corrections, the sentencing range for first-degree murder is 20 to 60 years' imprisonment. 730 ILCS 5/5-4.5-20(a) (West 2016). However, where, as here, the defendant personally discharged a firearm that proximately caused death to another individual, "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 2016). Defendant's life sentence therefore fell within the statutory range.

¶ 85 Further, the record does not affirmatively demonstrate that the circuit court failed to consider the mitigating evidence admitted at defendant's sentencing hearing. The circuit court was presented with evidence that between the ages of 18 and 20, defendant sold crack cocaine

and was convicted of gang loitering, unlawful possession of a handgun, aggravated unlawful use of a weapon, and reckless conduct. Moreover, he was involved in the Cervantes murder and the attempted murder of Ramos eighteen months after murdering Alvarado. The mitigating evidence indicated defendant performed good deeds for his family members, came from a broken home, had a religious upbringing, had not misbehaved in prison, and had successfully completed court supervision. In making its ruling the circuit court observed that the murder was premeditated; defendant was "out armed looking for someone to shoot at and someone to kill." The court further acknowledged that it "look[ed] at all of the circumstances in this case," and specifically found defendant had no rehabilitative potential.

¶ 86 We presume the circuit court considered defendant's age as a mitigating factor (*McWilliams*, 2015 IL App (1st) 130913, ¶ 27), which was only one of many factors considered by the circuit court. The circuit court was in the best position to consider the sentencing factors (*Alexander*, 239 Ill. 2d at 212-13) and it is not our function to reweigh them (*Streit*, 142 Ill. 2d at 19). As the record does not affirmatively demonstrate the circuit court failed to consider the mitigating evidence, we find the circuit court did not abuse its discretion in sentencing defendant to natural life imprisonment in light of the evidence in mitigation and aggravation discussed above and in light of the circumstances of the crime. See *Streit*, 142 Ill. 2d at 19; *Flores*, 404 Ill. App. 3d at 158; *Pippen*, 324 Ill. App. 3d at 652.

¶ 87 III. CONCLUSION

¶ 88 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 89 Affirmed.