2019 IL App (1st) 163032-U

FIFTH DIVISION
September 13, 2019

No. 1-16-3032

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. TERRY BRIDGES, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 12 CR 19610 Honorable Maura Slattery Boyle, Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Justices Cunningham and Harris concurred in the judgment.

ORDER

¶ 1 ***Held:*** The circuit court did not err in allowing the State to introduce "excessive" evidence of an unrelated prior murder to show defendant's motive to commit the charged murder. The circuit court did not abuse its discretion in imposing a natural-life sentence. Affirmed.

¶ 2 Following a jury trial, defendant Terry Bridges was found guilty of first-degree murder and sentenced to natural life imprisonment. On appeal, defendant contends that the circuit court erred in allowing the State to introduce "excessive" evidence of an unrelated prior murder to show defendant's motive to commit the charged offense. In the alternative, defendant contends that the circuit court abused its discretion in imposing a natural-life sentence. We affirm.

¶ 3 BACKGROUND

¶ 4 Defendant and codefendant Tyrell Lewis were charged by indictment (under case no. 12CR9610) with multiple counts of first-degree murder (720 ILCS 5/9-1(a)(1) (West 2012)). The charges stem from the April 15, 2012, shooting death of Kimberly Harris (the Harris murder). One of the counts informed defendant that the State intended to seek an extended-term sentence because defendant committed the offense with the intent to prevent Harris from testifying in a prosecution or to punish her for having already done so. Harris was the sole eyewitness (and victim) of an August 2011 shooting that also resulted in the death of Keith Slugg (the Slugg murder). Harris named defendant's brother, Demarius Bridges, as the shooter in the Slugg murder. Demarius, although indicted and incarcerated for the Slugg murder, had not been tried for the Slugg murder at the time of Harris's death.[1]

¶ 5 The State filed a pretrial motion *in limine* to allow evidence of the Slugg murder to establish "motive, *** intent" and to corroborate defendant's "confession." The State's motion alleged that Demarius and defendant agreed to pay Lewis to kill Harris to prevent her from testifying against defendant's brother in the Slugg murder case.

¶ 6 The Slugg Murder

¶ 7 The State's motion recounted the following facts from the Slugg murder. At around 4 a.m. on August 20, 2011, Harris and Slugg were in a parking lot at 1051 West Maxwell Street in Chicago. According to Harris, while the couple was having sex in the front seat of Slugg's car, Demarius, who was standing close to the car, shot her and Slugg multiple times. Slugg died at

[1] Demarius was subsequently convicted for the Slugg murder, and his direct appeal is pending before this court. See *People v. Bridges*, No. 1-15-2604. We further note that, although Demarius was subsequently indicted (under case no. 13CR2372) for also taking part in the Harris murder, he was later acquitted of this charge following a bench trial.

the scene, but Harris survived. Harris knew Demarius from previous occasions and identified him as the shooter to police officers, responding paramedics, treating physicians, assistant state's attorneys, and a grand jury.

¶ 8 The State further noted that the same gun—which was recovered from the scene of the Harris murder—was used in both murders, and defendant purchased the gun. The State also alleged that Harris, "the sole surviving eye witness [*sic*]" to the Slugg murder, was "lured to the scene of her murder by defendant." The State added that defendant both drove Lewis to and from the scene of the Harris murder.

¶ 9 Over defense counsel's objection, the circuit court granted the State's motion, finding that the evidence was relevant "for various reasons," including to establish motive, "[h]ostility towards a witness," and "lack of mistake." The court, however, indicated that it would give a limiting instruction to the jury.

¶ 10 The State subsequently filed a motion to admit various statements Harris made identifying Demarius as the shooter during the Slugg murder. The State argued that the statements were admissible both as dying declarations, excited utterances, statements made during an ongoing emergency situation, and also under the doctrine of forfeiture by wrongdoing. Over defense counsel's objection, the circuit court granted the State's motion.

¶ 11 On the eve of trial, defense counsel filed a motion *in limine* asking the court to preclude the State from presenting evidence as to the Slugg murder, or in the alternative, to limit the amount of evidence from that case to be presented to the jury. In particular, defense counsel noted that the State had listed nine witnesses to testify regarding their participation in the Slugg murder, which counsel deemed "excessive." Also regarding the Slugg murder, counsel further sought a prohibition of "bloody and inflammatory photos," a limitation on firearms evidence,

and striking statements from Harris's grand jury testimony that would be tantamount to prior consistent statements. The court denied this motion, and the cause proceeded to trial.

¶ 12 The State first called Chicago police officer Homero Garza to testify regarding the Slugg murder. Officer Garza stated that, at around 4 a.m. on August 28, 2011, he responded to a call of shots fired and a car alarm at the parking lot of 1051 West Maxwell Street in Chicago. Garza arrived at the location, which he described as well-lit, and saw a black Buick. The vehicle was "riddled" with bullet holes, a "sea of shell casings" was on the ground nearby, and its horn was sounding. The driver of the car (later identified as Slugg) was motionless, and Garza also saw a woman (later identified as Harris), naked, lying across the front seat with her head in the front passenger-seat well and using the heel of her foot to sound the car's horn.

¶ 13 Garza described Harris as "filled with blood" with "bullet holes on her body." Harris was yelling that she could not breathe and was asking for an ambulance. Harris said she did not want to die and explained that she had a daughter. Garza called for an ambulance and asked Harris what happened. While waiting for the paramedics, Garza said Harris identified "D-Bo" or "Demarius" as the shooter "[a] minimum of 20 times." Garza subsequently identified People's Exhibits 5 through 8 as photographs of the Slugg murder crime scene. The State asked for the four exhibits to be admitted into evidence and published to the jury. Defendant did not object, and the court granted the State's request.

¶ 14 Chicago fire department paramedic Katrina Basic then testified that, at the time of the Slugg murder, she arrived on the scene—which she said one could see "clearly" from the lighting—and saw a black vehicle as well as bullet casings and "bullet holes throughout the car." She saw a male who was not moving and a female lying across him. Basic said that the female, who was naked other than wearing a shirt around her waist, had her head in the passenger wheel-

well area, her body was across the male, and her feet and back were "kind of towards the steering wheel." Basic said that the female had at least 14 gunshot wounds on her arms, legs, chest, and abdomen. In addition, there was "exceedingly a significant amount of blood." Basic said that, she, her partner, and two other officers helped pull Harris onto a backboard and then a stretcher for transport into the ambulance. Basic noted that, due to the amount of blood, Harris was "very slippery and difficult to move." Once in the ambulance, Basic asked Harris who the shooter was. Harris responded, "D-Bo, Demarius." At the hospital, Basic heard Harris reiterate to the medical staff and later to police detectives that "D-Bo shot me, Demarius."

¶ 15 Chicago police detective Daniel Gallagher testified that he and his partner spoke to Harris at around 5:30 a.m. at the hospital while Harris was being prepared for surgery. In response to Gallagher's questions, Harris stated that "D-Bo" shot her, that he lived in the Abla housing complex, and his real name was Demarius. Gallagher further confirmed that defendant's brother Demarius was known as D-Bo, and was arrested on September 7, 2011, for the Slugg murder.

¶ 16 Assistant State's Attorney Kelly Coakley testified that she interviewed Harris in the intensive care unit of the hospital after Harris's surgery. Harris agreed to memorialize her statement, but since Harris's hands were bandaged from the injuries, Harris indicated that she wanted to have her statement video recorded. Coakley recorded the statement, which was played for the jury. Harris's video recorded statement described the circumstances of the Slugg murder. In her statement, Harris also confirmed that there was enough light to see that Demarius was the shooter, and there were no obstructions blocking her view. She further explained that she had known Demarius for about 10 years.

¶ 17 Assistant State's Attorney Toni Giancola testified that, on October 4, 2011, she met Harris to have Harris testify before a grand jury regarding the Slugg murder. Giancola stated

that Harris arrived in a medical van assisted by a nurse from a rehabilitation center where Harris was being treated. Giancola confirmed that Harris was the sole witness to the Slugg murder. After speaking with Giancola, Harris testified in response to Giancola's questions before the grand jury. A transcript of Harris's grand jury testimony was then read to the jury.

¶ 18 Brian Smith, a forensic investigator with the Chicago police department, testified that he processed the scene of the Slugg murder with his partner, Carl Brasic, at around 5:15 a.m. on August 28, 2011. Smith stated that he had recovered 18 spent .40-caliber shell casings and 11 spent nine-millimeter shell casings, as well as multiple fired bullets and "metal fragments." Smith identified "People's Exhibits 18 through 43" as various photographs of the Slugg murder crime scene, and he stated that exhibit 44 was a photograph of the victim (Slugg) in the vehicle. The State asked for the 27 exhibits to be admitted into evidence and published to the jury. Defendant again did not object, and the court granted the State's request.

¶ 19 Dr. Jon Gates, an assistant Cook county medical examiner, testified as an expert that Slugg's died as a result of gunshot wounds and the manner of death was homicide. During Gates's testimony, approximately 17 autopsy photographs were admitted into evidence and published to the jury over defendant's objection.

¶ 20 The Harris Murder

¶ 21 The State then presented its evidence regarding the Harris murder. Harris's sister, Kourtney, testified that Harris's friend, Charnice Chapman,[2] drove a blue BMW "truck" and was also known as "Munchie." In addition, Kourtney testified that Conley English was Harris's friend from school.

[2] In the record, Chapman's first name is also spelled "Charniece," "Charniese," and "Charnise." For clarity, we will use the spelling "Charnice."

¶ 22 The State then called Andrew Allen to testify. Allen said that he did not "[a]t all" want to testify and agreed that he was only testifying pursuant to a court order. Allen further conceded that, he had a pending "narcotics delivery of controlled substance [*sic*]" case and had been arrested for a felony narcotics case in 2013. Allen, however, stated that he had not received any promises in exchange for his testimony.

¶ 23 Allen then testified that, on the day of the Harris murder, he lived in the area of South Francisco Avenue and West Fluornoy Street in Chicago. He left his house in a Jeep to get it fixed by a mechanic he knew as "Pee Wee" who lived on West Arthington Street. Allen picked up two friends and planned to go "smoke weed." While driving, Allen picked up another person he knew as "Kunny G" or "Conley." Conley got in the front passenger seat, and they drove to Manley High School, where Conley got out to see if Pee Wee was available.

¶ 24 Conley got back into the car and asked Allen if he (Conley) could drive Allen's car to drop off Conley's girlfriend. Allen agreed, and after dropping off Allen's two friends, Conley and Allen continued on, stopping in the area of Arthington and Francisco. Allen said a woman got out of a blue car and got into the back seat of his car.

¶ 25 Allen then told Conley to drive back to Pee Wee's garage. Conley parked the car in the alley in back of the garage. Conley got out and knocked on the door. At some point, Allen no longer saw where Conley went, and Allen became a "little bit" concerned. Allen subsequently heard a "bunch of" gunshots and bent down. He could not remember where the shots came from, nor where the female from the back seat of his car had gone. Allen remembered seeing a person run but did not know "what else happened after that." Allen said he then quickly drove from the area, and although he saw "[s]omebody" on the corner, he did not pick that person up.

¶ 26 Allen then agreed that, on September 18, 2012, Detectives Swidarek and Garcia went to Allen's home and discussed the events surrounding the Harris murder. Allen, however, either denied or could not recall various statements he made to the detectives.

¶ 27 On cross-examination, Allen said that he was high when he took the car to Pee Wee's, and that the detectives induced Allen to go to the police station by calling Allen and speaking to him "about some sexual harassment or something." Allen added that he was on Ecstasy when he spoke to Assistant State's Attorney Kevin DeBoni. Allen further stated that he was threatened with jail if he refused to sign a statement or testify before the grand jury about the Harris murder, but Allen could not remember who specifically had threatened him. The following colloquy then took place when counsel asked Allen whether he was impaired at the time of his trial testimony:

"Q. [Defense counsel:] Are you high today?

A. What?

Q. Are you high today?

A. Yes.

Q. Marijuana or Ecstasy?

A. I thought you said hi. I ain't high.

Q. Are you sure?

A. Yes."

¶ 28 Victor Tousignant then testified that he was a 52-year-old architect, who lived on Taylor Street near the crime scene. At around 7 p.m. on April 15, 2002, he was in his kitchen and heard around nine "sharp pops" "in a tight sequence." He went onto his back porch and then heard a second round of about a dozen gunshots. He believed the shots were coming from an alley on the other side of South Sacramento Boulevard. Tousignant looked in that area and saw an

individual moving quickly out of the alley with one arm held down "like he was trying to hide something that was in his hand." He said the person was African-American, wearing all-black clothing including a "hoody like garment." Tousignant further described the person as having a "lazy eye," pronounced temples, and a very short haircut. Tousignant identified the person in court as codefendant Lewis. When Lewis was about 40-45 feet from Tousignant, a dark gray Infiniti "QX56" SUV pulled up and Lewis got in. Tousignant noted that it was still light out. After the car drove off, Tousignant called 9-1-1 and later spoke to police. In September 2012, Tousignant identified Lewis both in a lineup conducted by police detectives and in a video recorded statement to Assistant State's Attorney DeBoni.

¶ 29 Chicago police detective Marco Garcia testified that, on September 18, 2012, he located Allen and left business cards at Allen's residence. Garcia said that he and his partner, detective Greg Swiderek brought Allen to the police station to interview him as a possible witness to Harris's murder. Garcia said that Allen was neither handcuffed nor in custody, and Garcia said that he was not threatened in any way and was not a suspect in a sexual harassment case. Garcia further confirmed that Allen was not threatened with jail if Allen refused to cooperate.

¶ 30 Garcia then testified regarding Allen's interview. Allen stated that, on the day of the Harris murder, Allen was driving his stepfather's Ford Explorer to Pee Wee, a neighborhood mechanic, to get it fixed. Allen told Garcia that Allen initially picked up two friends and they drove around the neighborhood "smoking weed." Shortly thereafter, Allen said he was flagged down by an individual later identified as Conley English. English got into the vehicle, and they went to Pee-Wee's garage. Allen parked on Arthington Street, and English, who was on his phone, got out of the car to see if Pee Wee was available.

¶ 31 After about six to eight minutes, English returned and told Allen to "come back in ten minutes." English asked to drive, and Allen agreed, moving into the front passenger seat. According to Garcia, Allen said they dropped off Allen's two friends and then went to get some food. As they were driving in the neighborhood, they saw a blue BMW "truck" that was owned by a woman Allen only knew as "Munch." English began to flag down the BMW, and then Harris got out of the BMW and into Allen's SUV. Garcia stated that he later learned that "Munch" was the nickname of Charnice Chapman, a friend of Harris.

¶ 32 English, Allen, and Harris then drove back to Pee Wee's. English parked in the alley between Arthington and Taylor, and he then got out of the car and knocked on the door of Pee Wee's shop, but no one answered after "several minutes," so English walked to the front at 2924 West Taylor. Allen then told Garcia that Allen lost sight of English. Allen and Harris waited several additional minutes, and then they also got out of the car. Garcia then related that Allen took three steps and saw a person he knew as "T-Lord" dressed in all black and holding a "shiny gun." Allen later identified T-Lord as codefendant Lewis.

¶ 33 Allen then witnessed Lewis shoot at Harris, and Allen jumped back into the driver's-side seat of the Ford Explorer. After the shooting, Lewis opened the passenger side door of the Explorer, pointed the gun at Allen and told Allen to drive off. Allen, however, stated that he could not find the key to start the vehicle, so Lewis closed the door, placed the gun into a purse he had been holding, and threw both items onto a roof across from their location. Allen then saw Lewis flee through the alley westbound toward Sacramento. Allen eventually located the key to the Explorer and immediately left the area. Allen saw English try to flag him down, but Allen made a U-turn and drove directly home. Garcia then testified that, two days later, he and other

detectives arrested defendant and codefendant Lewis for the Harris murder. Garcia further confirmed that Tousignant later identified Lewis in a lineup at the police station.

¶ 34 Assistant State's Attorney Kevin DeBoni then testified that, at around 4:30-5:00 a.m. on September 19, 2012, he interviewed Allen for about an hour regarding the Harris murder. After DeBoni introduced himself and explained his role in the case, Allen agreed to speak to him. During the interview, Allen told ASA DeBoni what he saw regarding the Harris murder and identified a photo of the shooter. DeBoni asked Allen if he would be willing to memorialize his statement either by video or in writing. Allen refused a video recorded statement but agreed to a written statement.

¶ 35 DeBoni testified that he wrote out the statement, including exhibits, and had Allen read a portion of it aloud to show that Allen could read. DeBoni then went over the entire statement so that Allen could make changes or corrections. Allen requested various corrections, which were initialed by DeBoni, Detective Garcia, and Allen. Allen then signed all the pages and exhibits of the statement. Allen identified photographs of "Kunny G" (Conley), "Kim," and "T-Lord" (the shooter). Allen's photograph was attached to the statement.

¶ 36 DeBoni neither threatened nor promised Allen with anything to induce Allen to speak to him. DeBoni further confirmed that, during Allen's time at the station, Allen was never handcuffed, was fed, and did not appear to be under the influence of drugs or alcohol. After completing the statement, DeBoni asked Allen about his treatment by detectives, and Allen responded that "he had been treated fine by police, Detectives, and had no complaints." The statement was published to the jury, which was substantially the same as Allen's statements to Detective Garcia.

¶ 37 Assistant State's Attorney Kevin Dillon testified that he spoke with Allen prior to Allen's testimony before the grand jury. During their conversation, Allen recounted to Dillon what he had observed with respect to the Harris murder. Dillon confirmed that Allen had not been promised or threatened with anything to induce him to testify before the grand jury. Dillon further stated that, Allen did not appear to be under the influence of alcohol or drugs. After Allen told Dillon that his written statement was accurate and that Allen was not threatened with anything to make him provide the statement, Allen testified before the grand jury in response to Dillon's questions. The transcript of Allen's grand jury testimony was then was published and read to the jury. The transcript corroborated the facts regarding Allen's statements as set forth in Detective Garcia and Allen's written statement.

¶ 38 The State then presented video recorded segments from various "POD cameras" (*i.e.*, neighborhood surveillance cameras) that were located in the general area of the Harris murder and were recording activity at the time of the Harris murder. The video recordings show the movements of a Ford Explorer (similar to the vehicle Allen was driving), a blue BMW SUV (similar to Chapman's vehicle), and a gray/silver Infiniti SUV (similar to defendant's vehicle). The movements of these vehicles are broadly consistent with Allen's testimony.

¶ 39 Chicago police department forensic investigator David Ryan testified that, on the evening of April 15, 2012, he and his partner processed the scene of the Harris murder. Ryan stated that there were two pools of blood on a concrete parking pad, one of which had metal fragments from bullets, a red "hair scrunchie," and teeth. Ryan also collected a fired bullet from the scene, as well as seven fired nine-millimeter cartridge casings. Ryan then went to Mount Sinai Hospital and collected another fired bullet from a nurse who had found it on the hospital gurney while the medical staff was treating Harris.

¶ 40 Cook County assistant medical examiner Dr. Jon Gates then testified as an expert in the field of forensic pathology. Dr. Gates stated that Dr. Goldschmidt had performed Harris's autopsy on April 16, 2012, but had since left the medical examiner's office and moved out of state. Dr. Gates explained, however, that he reviewed the contents of the office's case file, including the autopsy protocol and photographs. Dr. Gates further noted that Harris had suffered two gunshot wounds to her face: one went through her right check fracturing her jaw and dislocating some teeth, and the other traveled from her lower lip through her left ear, causing brain injury, fracturing several facial bones and her jaw, and also dislocating several teeth. In addition to the two gunshot wounds directly to her face were 13 additional gunshot wounds to her torso and lower extremities. Dr. Gates concluded that Harris's manner of death was homicide caused by multiple gunshot wounds.

¶ 41 Chicago police department sergeant Brian Holy testified that, on the day after the Harris murder, he went to 2920 West Taylor Street, which he stated was a single-story brick building with a sign reading "Max Garage." Holy added that he "believe[d]" that this building touched or was connected to the buildings at 2922 and 2924 West Taylor Street. When Holy went to the roof of 2920, he saw "nothing of evidentiary value," and also saw that the roof of 2922 had collapsed. On top of the two-story 2924 West Taylor building, however, Holy recovered a nine-millimeter handgun. Holy noted that the handgun was "ready to fire" and had one live round, but the magazine was empty. In addition, Holy looked down to the 2922 West Taylor building and noticed a black purse, which was later recovered and found to contain Harris's identification. The handgun and purse were both submitted for DNA testing. The handgun contained no suitable DNA profiles for comparison. The handle of the purse had a partial, mixed male and female DNA. The partial female DNA sample was consistent with Harris, whereas the partial

male DNA sample excluded defendant as a donor but not Lewis, albeit one in 300 black individuals would not be excluded from contributing to that profile.

¶ 42 Forensic analysis established that the recovered cartridge cases, fired bullet, and fired bullet jacket from the Harris murder were fired from the recovered handgun. In addition, the eleven 9-millimeter cartridge cases and two fired bullets recovered from the Slugg murder were also fired from that same weapon. Further testimonial evidence established that defendant had legally purchased the recovered handgun in March 2007.

¶ 43 Cell phone and Cook County Jail records established that, the morning after defendant visited Demarius in jail the evening of March 28, 2012, defendant called Lewis (Harris's alleged shooter) the next morning. Lewis then called defendant for the first time on March 31, 2012, and visited Demarius for the first and only time the next day.

¶ 44 After defendant visited his brother on April 4, 2012, defendant and Lewis began contacting each other, and by April 13, they also were communicating with English. The communications occurred with increasing frequency, reaching a peak of 40 contacts between the three of them (and even Harris) on April 15, the day of Harris's murder. Half of those communications took place within the hour prior to the murder, and 10 occurred after the murder. Defendant and Lewis then abruptly ceased communicating from about 6:30 p.m. until around 10 p.m. that day.

¶ 45 Cell phone tower records also confirmed that, on April 15, 2012, defendant's cell phone was used in the area of his home until 5:44 p.m. (when he received a call from English), at which point the phone was used en route from defendant's home to the area of the crime scene. Defendant's phone was used in that area until 7:03 p.m. Five minutes later, it was being used north of the crime scene, and by around 7:30 p.m. it was over three miles northeast of the crime

scene. Lewis's cell phone was also used in the area of the crime scene until around 7 p.m., at which point both Lewis's and defendant's phones were located in the same general area north of the crime scene at around 7:20 p.m.. The phones then moved together until just past 7:30 p.m., when they were over three miles from the scene.

¶ 46 Chicago police detective Michelle Wood also testified that she was assigned to investigate the Harris murder. She first spoke to defendant on April 22, 2012. At that time, defendant told her that, on the day of the Harris murder, he had worked from 7 a.m. to 4:30 p.m., after which he drove home, showered, and then picked up his girlfriend at around 6 p.m. They then went to an Olive Garden restaurant at the North Riverside mall. At around 9 p.m., they went to a movie theater that was also at North Riverside mall.

¶ 47 Wood then testified that defendant and Lewis were arrested on September 20, 2012. Wood noted that, on that same evening, Allen identified Lewis in a lineup as the shooter. After Wood advised defendant of his *Miranda* rights, he agreed to speak. Wood interviewed defendant numerous times, all of which were video recorded. Wood identified the video recordings in court, and they were played for the jury.

¶ 48 Defendant initially denied involvement in the Harris murder, and he again stated that, on the day of the murder, he finished work, went home to shower, and then took his girlfriend to dinner and a movie. Defendant also stated that he only knew Lewis through Demarius and did not speak to Lewis except when Lewis would ask about Demarius.

¶ 49 Defendant, however, eventually admitted that, two days before Harris's murder, he saw Lewis at a barbershop and heard Lewis state his intention to "knock her [Harris] off' for money. Defendant, however, denied providing money to Lewis. Defendant further admitted that he was in the area around the time of the murder. Defendant initially said that he was there to get his car

washed, but he later admitted that he did not get his car washed that night and was instead at a barbershop on South California Avenue and West Polk Street. There, Lewis got in defendant's car and spoke about defendant's brother's case. Defendant drove around the area with Lewis and picked up an individual defendant knew as "C.G." Shortly thereafter, defendant dropped co-defendant Lewis and C.G. off, drove around, came back, and picked up Lewis on Sacramento at the alleyway that ran between Arthington and Taylor.

¶ 50 However, defendant maintained that he: did not know what Lewis and C.G. were talking about in his car, never heard any shots, had nothing to do with the shooting, did not know Lewis killed Harris, never saw Lewis with a gun, and just dropped co-defendant Lewis off "at the corner" before going to get his girlfriend.

¶ 51 Defendant further stated that he was upset to hear of Harris's death because he knew that she was lying about Demarius being involved in the Slugg murder, and Demarius's case would therefore have been "better" if she were alive. Defendant explained that, were Harris able to testify, Demarius's attorney would be able to "catch her in a lie," which included an assertion that Harris could not have seen the person who shot Slugg because it was "pitch black out." Defendant also suggested that Harris was intoxicated and high. Defendant added that he had conducted legal research and investigations for his brother's case and characterized himself as an assistant to his brother's attorney.

¶ 52 The State then rested its case, and defendant elected not to testify or present evidence. Following closing arguments, the jury found defendant guilty of first degree murder while armed with a firearm and with the intent to prevent a witness from testifying in a criminal trial. The circuit court later sentenced defendant to life imprisonment. This appeal followed.

¶ 53 ANALYSIS

¶ 54 The Evidence of the Slugg Murder

¶ 55 Defendant contends that the circuit court erred in admitting "excessive" evidence relating to the Slugg murder. Defendant explains that, although defendant was not charged in connection with that murder, the State sought to introduce evidence related to that murder to establish that defendant murdered Harris to prevent her from testifying against defendant's brother Demarius, whom Harris identified as the shooter in the Slugg murder. Defendant asserts that Harris's seven out-of-court statements identifying Demarius as Slugg's murderer and the various crime scene and autopsy photographs related to the Slugg murder were "highly inflammatory and prejudicial," warranting a new trial.

¶ 56 Evidence of other crimes is admissible if it is relevant "for any purpose other than to show [a defendant's] propensity to commit crime," such as to establish *modus operandi*, intent, identity, motive or absence of mistake. *People v. Robinson*, 167 Ill. 2d 53, 62-63 (1995); see also Ill. R. Evid. 404(b) (eff. Jan. 1, 2011). Nonetheless, even where relevant for a permissible purpose, the circuit court must weigh the prejudicial effect of admitting the evidence against its probative value and exclude it if the probative value of the evidence is "substantially outweighed by" the prejudicial effect on the defendant's right to a fair trial. *Robinson*, 167 Ill. 2d at 64.

¶ 57 In *People v. Pikes*, 2013 IL 115171, ¶ 20, however, our supreme court held that, where (as here) a defendant is not involved in the prior incident, it is not an " 'other crime' " subject to rules of admissibility under our Rule of Evidence 404(b) and the other-crimes doctrine. The court recalled that "the rule that evidence of the commission of other crimes by the accused is inadmissible for the purpose of showing a propensity to commit crimes is an aspect of the rule that the prosecution may not introduce evidence of a character trait of the accused." *Id.* ¶ 16

(citing Michael H. Graham, Graham's Handbook of Illinois Evidence § 404.5 (10th ed. 2010)). "The concern is not that such evidence is lacking in probative value, but that it may overpersuade the jury, which might convict the accused because it believes he or she is a bad person." *Id.*

¶ 58 The court then reasoned that "the concerns underlying the admission of other-crimes evidence are not present when the uncharged crime or bad act was not committed by the defendant," and therefore, "there is no danger that the jury will convict the defendant because it believes he or she has a propensity to commit crimes." *Id.* ¶ 16. Simply because the challenged evidence comprises an uncharged offense does not, by itself, require analysis under the other-crimes doctrine; rather, those principles apply "only when the defendant is alleged to have committed the prior offense." *Id.* ¶ 20. Thus, the admissibility of a prior incident—in which a defendant was *not* a participant—is determined "under ordinary principles of relevance." *Id.*

¶ 59 "Evidence is generally admissible if it is relevant." *Id.* ¶ 21 (citing Ill. R. Evid. 402 (eff. Jan. 1, 2011)). Evidence is considered relevant if it has "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." *Id.* (citing Ill. R. Evid. 401 (eff. Jan. 1, 2011)). Nonetheless, even relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice." *Id.* (citing Ill. R. Evid. 403 (eff. Jan. 1, 2011)).

¶ 60 The admissibility of evidence is committed to the sound discretion of the trial court, and we will only reverse a circuit court's decision whether to admit evidence if the court abused its discretion. *People v. Becker*, 239 Ill. 2d 215, 234 (2010). An abuse of discretion occurs when the court's decision is "arbitrary, fanciful or unreasonable," or where "no reasonable person would agree with the position adopted by the trial court." *Id.*

¶ 61 In this case, there was no abuse of discretion. The State's use of evidence from the Slugg murder did not constitute "other crimes evidence," because defendant admittedly was not involved in that particular crime. As such, ordinary principles of relevance apply. See *Pikes*, 2013 IL 115171, ¶ 20. Harris's statements identifying defendant's brother as the shooter in the Slugg murder not only established defendant's motive for murdering Harris, but also directly rebutted defendant's repeated video recorded statements challenging Harris's ability to see the shooter and asserting that Harris was intoxicated or otherwise impaired, which defendant implied affected her ability to identify the shooter or recall the Slugg murder. The various crime scene and autopsy photographs from the Slugg murder[3] provided context for Harris's desperate statements to responding officers and medical staff (1) identifying defendant's brother as the shooter and (2) expressing her fear that she would not survive and be able to get home to her four-year-old daughter. They further supported allowing the admission of Harris's statements as a hearsay exception for dying declarations.

¶ 62 Although the photographs of the Slugg murder (like the subsequent photographs of the Harris murder) were graphic, defendant was not directly involved in that particular crime, so there was "no danger" that the jury would have convicted defendant solely because it believed he had a propensity to commit crimes. *Id.* ¶ 16. Therefore, we cannot hold that the circuit court abused its discretion because its decision was not "arbitrary, fanciful or unreasonable," nor one where "no reasonable person would agree with the position adopted by the trial court." *Becker*, 239 Ill. 2d at 234. Consequently, we must reject defendant's contention of error.

[3] At trial, defendant lodged no objection when the State moved to have the crime scene photographs published to the jury.

¶ 63 Defendant relies primarily upon two cases, *People v. Thigpen*, 306 Ill. App. 3d 29 (1999), and *People v. Lopez*, 2014 IL App (1st) 102938-B, to support his argument that the evidence of the Slugg murder was improperly admitted. Both cases, however, are distinguishable.

¶ 64 In *Thigpen*, the challenged evidence concerned a prior crime that the defendant had committed (see *Thigpen*, 306 Ill. App. 3d at 34-35), which raised concerns that the jury could have convicted the defendant if it believed he had a propensity to commit crimes (see *Pikes*, 2013 IL 115171, ¶ 16). Here, by contrast, defendant indisputably did not commit the prior crime (*i.e.*, the Slugg murder), so these concerns are not present. See *id.* ¶ 16 ((stating that "when the uncharged crime or bad act was not committed by the defendant[,] *** there is no danger that the jury will convict the defendant because it believes he *** has a propensity to commit crimes").

¶ 65 In *Lopez*, this court distinguished the holding in *Pikes* because in *Lopez*, there was no evidence that (1) the murder at issue (on December 24, 2007) of a worker at a factory was connected to a prior attack (on December 4, 2007) on a different individual outside of that same factory or (2) the defendant knew about the prior incident. *Lopez*, 2014 IL App (1st) 102938-B, ¶ 24. In this case, the evidence is overwhelming that the Harris murder was connected to the Slugg murder and that defendant knew of the Slugg murder. Defendant's reliance upon *Thigpen* and *Lopez* is therefore unavailing.

¶ 66 In any event, a circuit court's erroneous exclusion of evidence is not reversible error if the exclusion is harmless, *i.e.*, where there is no reasonable probability that the outcome of the trial would have been different absent the error. *People v. Hood*, 244 Ill. App. 3d 728, 734 (1993) (citing *Chapman v. California*, 386 U.S. 18, 23 (1967); *Fahy v. Connecticut*, 375 U.S. 85, 86-87 (1963)). To determine whether an error is harmless, we focus on, *inter alia*, either the

error, and whether it might have contributed to the conviction, or other properly admitted evidence, and whether it overwhelmingly supports the conviction. See *Becker*, 239 Ill. 2d at 240.

¶ 67 Here, any purported error was harmless beyond a reasonable doubt. The evidence at trial revealed that Harris was the sole surviving eyewitness to the Slugg murder, and she had identified defendant's brother as the shooter. The gun that was located at the scene of the Harris murder was also used in the Slugg murder, and defendant purchased that gun. Defendant also acted as the driver in the Harris murder, transporting Lewis (the shooter in the Harris murder) both to and from the scene. Under these circumstances, we cannot hold that, absent the complained-of evidence, the jury would have rendered a different verdict. The evidence of defendant's guilt was so compelling as to render any possible error harmless beyond a reasonable doubt. See *id.* We must therefore reject defendant's claim of error.

¶ 68 Defendant's Sentence

¶ 69 Finally, defendant contends in the alternative that his natural-life sentence is excessive. Specifically, defendant argues that the circuit court gave "insufficient weight" to the fact that the "circumstances are unlikely to result in further crime" where defendant's brother, who is currently serving a lengthy prison sentence for the Slugg murder, motivated defendant to murder Harris (who identified defendant's brother as Slugg's murderer). Defendant further argues that the circuit court failed to give sufficient weight to defendant's potential for rehabilitation, gainful employment, and reintegration into society. Defendant asks that we remand the matter for a new sentencing hearing followed by a term-of-years sentence.

¶ 70 In imposing a sentence, the trial court must balance relevant factors, such as the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). The trial court has a superior opportunity to evaluate and

weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *Id.* In addition, a trial court is not required to expressly outline its reasoning for sentencing, and absent some affirmative indication to the contrary (other than the sentence itself), we must presume that the court considered all mitigating factors on the record. *People v. Perkins*, 408 Ill. App. 3d 752, 762-63 (2011). Since the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the seriousness of the offense, and the presence of mitigating factors neither requires a minimum sentence nor precludes a maximum sentence. *Alexander*, 239 Ill. 2d at 214.

¶ 71 A sentence within statutory limits is reviewed for an abuse of discretion, and we may only alter such a sentence when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Id.* at 212. So long as the trial court does not ignore pertinent mitigating factors or consider either incompetent evidence or improper aggravating factors, it has wide latitude in sentencing a defendant to any term within the applicable statutory range. *Perkins*, 408 Ill. App. 3d at 762-63. This broad latitude means that this court cannot substitute its judgment simply because it might have weighed the sentencing factors differently. *Alexander*, 239 Ill. 2d at 212-13.

¶ 72 In this case, the trial court did not abuse its discretion. Ordinarily, the sentencing range for first degree murder while armed with a firearm is from 35 to 75 years' imprisonment. See 730 ILCS 5/5-4.5-20(a) (West 2012) (20- to 60-year sentencing range for first degree murder); 730 ILCS 5/5-8-1(d)(i) (West 2012) (15-year add-on if a firearm is used). Here, however, the State alleged—and the jury specifically found—that defendant murdered Harris with the intent to prevent her from testifying in a criminal prosecution. Therefore, a natural life sentence is permissible. See 730 ILCS 5/5-4.5-20(a) (West 2012) (natural life sentence for murder "as

provided in Section 5-8-1 (730 ILCS 5/5-8-1)"); 730 ILCS 5/5-8-1(a)(1)(b) (West 2012) (natural life imprisonment if any aggravating factor "listed in subsection (b) or (b-5) of Section 9-1 of the Criminal Code" is present); 720 ILCS 5/9-1(b)(8) (West 2012) (aggravating factor if defendant committed murder with intent to prevent a witness from testifying). Since defendant's sentence falls within the sentencing range, we may only disturb the sentence if it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Alexander*, 239 Ill. 2d at 212. Neither exception applies in this case.

¶ 73 Here, contrary to defendant's claim, the circuit court did indeed comment that defendant's murder of Harris was directly related to her decision to testify against defendant's brother. The court further stated that defendant's brother was "taking responsibility for his conduct" with respect to the Slugg murder, which unmistakably refers to his incarceration for the Slugg murder. The court also stated that it had taken into account defendant's "education, *** achievements," and various letters that had been written on his behalf. Moreover, the evidence at trial revealed that Harris was shot to death multiple times at close range, shattering her jaw and dislodging several of her teeth. The evidence further established that defendant purchased the gun that was used in both the Slugg murder and the Harris murder (where it was eventually located). In addition, defendant drove Lewis to and from the scene of the Harris murder. The court properly considered the seriousness of the offense as the most important sentencing factor and was not obligated to give greater weight to mitigating factors than to the seriousness of the offense. *Id.* at 214. Furthermore, whatever mitigating factors were present did not prevent a maximum sentence from being imposed. *Id.* This court cannot substitute its judgment simply because we might have weighed the sentencing factors differently. *Id.* at 212-13. Defendant's sentence falls within the sentencing range, neither varies greatly from the spirit and purpose of

the law, nor is manifestly disproportionate to the nature of the offense; as such, this court may not disturb it. *Id.* at 212. Defendant's claim is thus meritless.

¶ 74 CONCLUSION

¶ 75 The circuit court did not err in allowing the State to present evidence relating to the Slugg murder. We reject defendant's claim that the court abused its discretion in imposing a natural-life sentence. Accordingly, we affirm the judgment of the circuit court.

¶ 76 Affirmed.