2015 IL App (3d) 130606-U

Order filed October 28, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 21st Judicial Circuit,
Plaintiff-Appellee,	)	Kankakee County, Illinois.
	)	
v.	)	Appeal No. 3-13-0606
	)	Circuit No. 09-CF-426
MICHAEL WILSON,	)	
	)	The Honorable
Defendant-Appellant.	)	Kathy Bradshaw-Elliott,
	)	Judge, Presiding.

PRESIDING JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court did not abuse its discretion in (1) transferring defendant's case from juvenile to criminal court where defendant was 14 years old, had previously been found delinquent and was charged with first-degree murder and armed robbery; (2) providing jury with accountability instruction where defense counsel argued that the individual with defendant shot and killed victim; (3) allowing witness to testify about his prior consistent statements where defense counsel suggested that witness's statements were new; (4) restricting cross-examination of a witness where the testimony would have been remote and speculative; or (5) sentencing defendant to 55 years for murder where defendant's conduct, prior to and after conviction, showed aggressive and violent behavior. Evidence was sufficient for jury to find defendant guilty where a witness testified that defendant shot the

victim and defendant's friend testified that defendant told him he had shot someone on the night of the murder.

¶ 2 The State charged defendant in a delinquency petition with first degree murder (720 ILCS 5/9-1(a) (West 2008)) and armed robbery (720 ILCS 5/18-2(a) (West 2008)). The State moved to transfer defendant's case from juvenile to criminal court, and the trial court granted the motion. The State then charged defendant in criminal court with first degree murder (720 ILCS 5/9-1(a) (West 2008)) and armed robbery (720 ILCS 5/18-2(a) (West 2008)). A jury found defendant guilty of both charges. The trial court sentenced defendant to consecutive terms of imprisonment of 55 years for murder and 4 years for armed robbery. On appeal, defendant argues that (1) the trial court should have denied the State's motion to transfer, (2) the jury should not have been instructed on accountability, (3) he was not proven guilty beyond a reasonable doubt, (4) the court improperly allowed testimony of prior consistent statements made by a State witness, (5) the court improperly restricted cross-examination of a State witness, and (6) the court erred in sentencing him to 55 years in prison for murder. We affirm.

¶ 3 FACTS

¶ 4 The State filed a petition alleging that defendant, a 14-year-old, was a delinquent minor. The petition alleged that defendant committed first degree murder and armed robbery when he fatally shot and stole money from Ryan Graefnitz. Thereafter, the State filed a motion to transfer defendant's case from juvenile court to criminal court.

¶ 5 At the hearing on the State's motion to transfer, a Kankakee City Police Department Detective, Donell Austin, testified that Graefnitz died after being shot in the back on South Chicago Avenue in Kankakee shortly after midnight on December 27, 2008. Austin spoke to two individuals, Tanosha Dorsey and Dartanyan Layne, who were inside the apartment building located at 512 South Chicago when the shooting occurred. Layne told Austin that he saw two

black men and one white man exit an SUV on Chicago Avenue and come into the apartment building. A few minutes later, as Layne and Dorsey were walking up the stairs, Layne heard someone say, "Brick yourself" or "Run it," which are street terms meaning "This is a robbery." Layne then heard "three bangs." Dorsey confirmed seeing three men in the vestibule of the apartment building and later hearing "three bangs."

¶ 6 Based on video footage, police were able to identify the two men who entered the apartment building with Graefnitz as defendant and Byron Moore. Graefnitz's friends, Walter Waschke and Joseph Benegas, told Austin that they travelled with Graefnitz to Kankakee to buy drugs. At a gas station, Graefnitz met defendant and Moore, who said they knew where he could buy drugs. Defendant and Moore got into an SUV with Graefnitz, Waschke and Benegas and directed them to 512 South Chicago Avenue. Defendant, Moore and Graefnitz exited the vehicle and went into the apartment building. A few minutes later, Waschke and Benegas heard "three bangs." Soon after, they saw Graefnitz stumble out of the building, followed by defendant and Moore. Benegas was scared and drove away.

¶ 7 Moore told police that he and defendant met Graefnitz when they were at a gas station buying snacks. Graefnitz asked them if they knew where he could buy crack cocaine, and they said they did. Moore and defendant got into a vehicle with Graefnitz, Waschke and Benegas and directed them to 512 South Chicago Avenue. When they got inside the apartment building, defendant pulled out a revolver, pointed it at Graefnitz and demanded money. Graefnitz turned to run, and defendant fired two shots at him. Graefnitz fell to the ground and said, "Don't hurt me, don't hurt me." Moore and defendant ran.

¶ 8 Travis Watson told police that he was sitting in his car after midnight on December 27, 2009, when defendant and Moore approached him. Defendant looked nervous and said, "I just popped a nigger," which meant he had just shot someone.

¶ 9 Dr. Paul Pasulka, a forensic psychologist, evaluated defendant. He testified that defendant was exposed to cocaine in the womb and subject to abuse and neglect as a young child. Pasulka discovered that defendant has intellectual, behavioral and developmental difficulties and functions academically at a second-grade level. Defendant has "mild retardation" and is in special education classes. Pasulka believed that defendant would be unable to defend himself in an adult correctional facility and thought defendant would benefit from treatment in a juvenile facility.

¶ 10 In 2007, defendant was found delinquent for committing disorderly conduct when he threatened to shoot people at Kankakee Junior High School. He was also charged and convicted of criminal trespass.

¶ 11 Brent Nelson, defendant's juvenile probation officer, testified that defendant had poor grades, poor attendance and behavior problems in school. He started but did not successfully complete drug treatment. He also violated home detention. When defendant was in juvenile detention, he threatened staff and other detainees and became involved in altercations with other residents.

¶ 12 Monica Mahan, an expert in juvenile transfer cases, evaluated defendant and concluded that he "seems to have difficulty in all areas of functioning." She recommended that defendant remain in the juvenile justice system, where he can be rehabilitated. She believed he would be at risk in an adult prison.

¶ 13 After considering the relevant statutory factors, the court granted the State's motion to transfer, finding that despite defendant's "tragic and devastating" circumstances of being exposed to cocaine in the womb and suffering from abuse and neglect as a child, defendant was charged with "cold blooded murder." The court concluded that charging defendant in the juvenile justice system "with the hope that this minor will somehow be transformed into a non-violent law abiding citizen ready for release in society at age 21" does not serve "the public interest nor the interest of justice." Defendant was then charged by indictment with first degree murder (720 ILCS 5/9-1(a) (West 2008)) and armed robbery (720 ILCS 5/18-2(a) (West 2008)).

¶ 14 At defendant's trial, Dartanyan Layne testified that he and Tonosha Dorsey were moving into an apartment at 512 South Chicago Avenue in Kankakee during the early morning hours of December 27, 2008, when he saw two black males and one Caucasian male exit an SUV on Chicago Avenue. The three men reached the door of the apartment building the same time Layne did. The Caucasian man said, "Merry Christmas," and held the door open for him. Layne entered the vestibule and waited for Dorsey to unlock the door that led to the stairs.

¶ 15 After Dorsey unlocked the door, she and Layne walked up the stairs. When they were halfway up the stairs, Layne heard someone say "break yourself or run it or something like that." Layne testified that "break yourself" and "run it" are street terms meaning a robbery is going to take place or "give me your money." Next, Layne heard two or three shots that "sounded like firecrackers." He continued walking up the stairs.

¶ 16 Tanosha Dorsey testified that she was helping Layne move items into her apartment during the early morning hours of December 27, 2008, when she saw "[t]wo dark-skinned guys and one light-skinned guy" exit a vehicle and walk toward her apartment building. The "light-skinned guy" opened the door for her and Layne. She could not tell if the man was a light-

skinned African-American or a Caucasian, but his complexion was lighter than the other two men. She and Layne continued up the stairs to her apartment. As they were walking up the stairs, she heard three "firecracker-like sounds."

¶ 17 Joseph Benegas testified that Graefnitz was his best friend. On December 26, 2008, he met Graefnitz at a bar in Manteno. A friend of Graefnitz's named "Wally" joined them later. The three of them decided that Wally would drive them to get cocaine. They drove to Kankakee and stopped at a few places, including a gas station. While Wally bought gas, Graefnitz went inside the station. Graefnitz returned to the vehicle with two "young looking" black males, who got into the back seat of the vehicle. One of the men was defendant. The other one was Byron Moore.

¶ 18 Defendant and Moore told Graefnitz that they were going to "hook him up," which meant "help him score some dope." Defendant and Moore directed Wally to an apartment building on South Chicago Avenue. When they arrived at the building, Graefnitz, Benegas, defendant and Moore got out of the vehicle, but defendant and Moore told Benegas to get back in the vehicle, so he did. Graefnitz, defendant and Moore went into the apartment building located at 512 South Chicago. Soon thereafter, Benegas heard two or three gunshots. He looked and saw Graefnitz collapsing in front of the apartment building and defendant and Moore running away in opposite directions. Wally drove off and circled the block three times. By the third time, the police had arrived.

¶ 19 Walter Waschke testified that he met up with Graefnitz and Benegas at a bar on December 26, 2008, at about 8:00 p.m. Soon after he arrived, the three men decided that they would go to Kankakee to get some cocaine. Waschke drove in an SUV that belonged to a friend of his. They stopped at several places in Kankakee to try to buy drugs, but no one was home.

They decided to leave Kankakee but stopped for gas first. At the gas station, Graefnitz met two "gentlemen" who said they would help them find a place to buy drugs.

¶ 20 The two men got into the vehicle Waschke was driving, and one of the men gave him directions to an apartment building. When they arrived at the apartment building, Graefnitz and the two men exited the vehicle and went inside. A minute or two later, Waschke heard three gunshots. After that, he saw Graefnitz, who looked hurt or wounded, come out of the building and collapse. The two men ran behind the back of the building, and Waschke sped off. He circled the block a couple of times. By the third time, ambulances and fire trucks had arrived.

¶ 21 Moore testified that he entered into an agreement with the State to testify against defendant in exchange for pleading guilty to armed robbery against Graefnitz and serving a 25-year prison sentence. Moore testified that on December 27, 2008, he and defendant stopped at a gas station to buy snacks. As they walked out of the gas station, a white man approached them and asked if they knew where he could buy crack cocaine. Defendant told him he could get some on South Chicago Avenue. Defendant and Moore got into a vehicle with the man and two other individuals and directed the driver to South Chicago.

¶ 22 When they arrived at 512 South Chicago, the driver parked, and Moore, Graefnitz and defendant exited the vehicle. They entered the vestibule of the apartment building, and defendant pressed a button to be buzzed in to another door. While they waited, a black male and black female entered the vestibule. They were carrying groceries and went upstairs.

¶ 23 Graefnitz told Moore and defendant they were taking too long, and defendant pulled out his gun and told Graefnitz to "run what he had," which meant he was being robbed. Graefnitz ran, defendant followed, and Moore heard two gunshots. After that, Moore ran outside and saw

Graefnitz on the ground by a car. Defendant was standing a couple feet away from Graefnitz, who was saying, "Please don't hurt me."

¶ 24 Moore and defendant ran in the direction of a friend's house. The friend was not home, but they saw another friend, Travis Watson, sitting in his car in the alley. They walked up to Watson, and defendant told him he had just "popped a nigga'," which meant he had shot someone.

¶ 25 On cross-examination, Moore testified that he did not remember if he had ever told anyone before trial that defendant said he "popped a nigga'." On re-direct, he testified, over defense counsel's objections, that he consistently reported to police and others that defendant was the shooter and that defendant told Watson that he shot someone on the night of the murder.

¶ 26 Travis Watson testified that he was sitting in his car on December 27, 2008, when he saw defendant and Moore across the street. They approached his vehicle, and defendant said, "I just shot a nigger." Defendant appeared nervous. Defendant told him that "a white guy" wanted to buy some drugs, and he and Moore wanted "to get some money out of him." Defendant said that when tried to rob the man, he ran, so defendant shot him twice in the back.

¶ 27 On cross-examination, defense counsel attempted to question Watson about whether he was afraid of Moore and about alleged death threats he had received from "Moore's people." The State objected, and the trial court sustained the objection.

¶ 28 Mikyla Graves, who was dating Moore in December 2008, testified that she saw Moore with a handgun approximately two weeks prior to December 27, 2008. Shortly after that, she saw him with a shotgun.

¶ 29 Kankakee police officers testified that they did not recover any shell casings near the location where Graefnitz's body was found. Austin testified that a lack of casings usually means the weapon involved is a revolver.

¶ 30 Jeffrey Parise, a forensic scientist with the Illinois State Police, examined a bullet that was taken from Graefnitz's body. Parise identified it as a .22 caliber bullet that was fired from a small handgun.

¶ 31 Prior to deliberations, the jury was given an instruction on accountability, over defendant's objection. In opening and closing arguments, defendant's attorney argued that Moore, not defendant, shot Graefnitz. The State consistently argued that defendant was the shooter.

¶ 32 The jury found defendant guilty of first degree murder and armed robbery. The jury was asked for sentence enhancement purposes if "defendant personally discharged the weapon that caused the death of Ryan Graefnitz?" The jury responded in the negative.

¶ 33 The trial court sentenced defendant to 55 years for murder and 4 years for armed robbery, to be served consecutively. Defendant filed a motion for new trial, arguing that (1) the trial court erred in granting the State's motion to transfer his case from juvenile to criminal court, (2) the jury should not have been instructed regarding accountability, and (3) he was not proven guilty beyond a reasonable doubt. The trial court denied the motion.

¶ 34 ANALYSIS

¶ 35 I. Motion to Transfer

¶ 36 Defendant argues that the trial court erred in granting the State's motion to transfer his case to criminal court. He contends that the trial court considered only the best interests of the public and not his best interests.

¶ 37 In Illinois, a 14–year–old may be prosecuted as an adult under the criminal laws of the State if a juvenile court determines, in its discretion, that there is probable cause to believe the allegations in a transfer motion are true and it is not in the best interests of the public to proceed under the Juvenile Court Act of 1987. 705 ILCS 405/5-805(3)(a) (West 2008). In determining whether to transfer a juvenile, the court must consider:

"(i) the age of the minor;

(ii) the history of the minor, including:

(A) any previous delinquent or criminal history of the minor,

(B) any previous abuse or neglect history of the minor, and

(C) any mental health, physical, or educational history of the minor or combination of these factors;

(iii) the circumstances of the offense, including:

(A) the seriousness of the offense,

(B) whether the minor is charged through accountability,

(C) whether there is evidence the offense was committed in an aggressive and premeditated manner,

(D) whether there is evidence the offense caused serious bodily harm,

(E) whether there is evidence the minor possessed a deadly weapon;

(iv) the advantages of treatment within the juvenile justice system including whether there are facilities or programs, or both, particularly available in the juvenile system;

(v) whether the security of the public requires sentencing under Chapter V of the Unified Code of Corrections:

(A) the minor's history of services, including the minor's willingness to participate meaningfully in available services;

(B) whether there is a reasonable likelihood that the minor can be rehabilitated before the expiration of the juvenile court's jurisdiction;

(C) the adequacy of the punishment or services.

In considering these factors, the court shall give greater weight to the seriousness of the alleged offense and the minor's prior record of delinquency than to the other factors listed in this subsection." 705 ILCS 405/5-805(3)(b) (West 2008).

¶ 38 The purpose of a transfer proceeding is to balance the best interests of the juvenile offender, particularly as his interests relate to his potential for rehabilitation, against the public's interest in being protected from crime. *People v. Moore*, 2011 IL App (3d) 090993, ¶ 19. A juvenile judge must receive and consider evidence as to each statutory factor, evaluate information concerning the type of facilities available for the treatment or rehabilitation of the minor, and consider critical nonstatutory elements, such as the resulting sentence if the minor is convicted under the Criminal Code. *Id*. ¶ 20. Adequate balancing under the statute requires considering which penalty would best serve both interests at stake. *Id.*

¶ 39 To affirm an order transferring a minor to criminal court, we must determine if there was sufficient evidence in the record as to each statutory factor to support the transfer order. *Id*. ¶ 21. Not all factors must be resolved against the juvenile. *People v. Fuller*, 292 Ill. App. 3d 651, 657 (1997). The role of this court when reviewing transfer cases is to determine whether, in evaluating the evidence in light of the statutory criteria, the juvenile court has abused its discretion. *Id*. at 658.

¶ 40 Here, the trial court properly considered the relevant factors and determined that transfer was warranted. The court noted that defendant was almost 15 years old when he allegedly committed "cold blooded murder" and was previously adjudicated delinquent for threatening to shoot people at his junior high school. Defendant had frequent behavior problems at school and in juvenile detention and was not likely to be transformed in six years from a murderer to a non-violent law abiding citizen.

¶ 41 The trial court pointed out that some factors did not support transfer, such as defendant's history of neglect and abuse, including being born with cocaine in his system, his mental health and educational disabilities, and the lack of services available to him in the Department of Corrections. Nevertheless, the majority of factors, including those that are to be given the most weight, favored transfer. See 705 ILCS 405/5-805(3)(b) (West 2008). The trial court's decision was not an abuse of discretion.

¶ 42 II. Accountability Instruction

¶ 43 Defendant argues that the trial court should not have instructed the jury on the theory of accountability because there was no evidence supporting that theory.

¶ 44 A person is legally accountable for the conduct of another when "either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2008). An accused may be deemed accountable for acts performed by another pursuant to a common plan or purpose. *People v. Cooper*, 194 Ill. 2d 419, 434 (2000). A conviction under accountability does not require proof of a preconceived plan if the evidence indicates involvement by the accused in the spontaneous acts of a group. *Id.* at 435.

¶ 45 An instruction on accountability is justified if there is even slight evidence supporting such a theory. *People v. Faysom*, 131 Ill. App. 3d 517, 527 (1985). Such evidence, along with evidence that the defendant acted as a principal, is sufficient to support an instruction on each theory, even if the State advanced only one theory in its case-in-chief. *People v. Beltran*, 327 Ill. App. 3d 685, 692 (2002). An accountability instruction is properly submitted to the jury, even though the State conducts its case-in-chief on the theory that the defendant was the principal, where the evidence shows that the defendant was present when the crime was committed but the defendant denies being the principal. See *People v. Batchelor*, 202 Ill. App. 3d 316, 331 (1990); *Faysom*, 131 Ill. App. 3d at 527-28; *People v. Balls*, 95 Ill. App. 3d 70, 75 (1981); *People v. Thomas*, 72 Ill. App. 3d 28, 35-36 (1979); *People v. Addison*, 56 Ill. App. 3d 92, 99-100 (1977).

¶ 46 We will not disturb a trial court's decision to issue a jury instruction on accountability absent an abuse of discretion. *People v. Reeves*, 314 Ill. App. 3d 482, 488 (2000). Moreover, an error in giving a jury instruction is harmless where the result at trial would not have been different had the jury been properly instructed. *People ex rel. City of Chicago v. Le Mirage, Inc.*, 2013 IL App (1st) 093547, ¶ 85. Any error in giving an accountability instruction is harmless where there is sufficient evidence to prove that the defendant actually committed the offense. *Id.*; *People v. Zirko*, 2012 IL App (1st) 092158, ¶ 39; *Faysom*, 131 Ill. App. 3d at 528.

¶ 47 Here, there was sufficient evidence to support the trial court's decision to instruct the jury regarding accountability. The evidence showed that both defendant and Moore went into the apartment building with Graefnitz, who was shot in the back and killed. The circumstantial evidence proves that either defendant or Moore was the shooter. While Moore testified that defendant was the shooter, defense counsel argued in opening and closing statements that Moore was actually the shooter. There was even some evidence to support that theory since Graves

testified to seeing Moore with a small caliber handgun two weeks earlier. Based on the evidence and defendant's theory, the trial court did not abuse its discretion in allowing the jury to be instructed on accountability.

¶ 48 III. Sufficiency of the Evidence

¶ 49 Defendant argues that there was insufficient evidence to support his murder conviction because the jury found that he did not discharge the weapon that killed Graefnitz and there was insufficient evidence to find him guilty based on accountability.

¶ 50 When considering a challenge to the sufficiency of the evidence, it is not our function to retry the defendant. *People v. Tenney*, 205 Ill. 2d 411 (2002). Rather, we must determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Carpenter*, 228 Ill. 2d 250, 265 (2008). A court will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it raises a reasonable doubt of defendant's guilt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 51 Here, there was sufficient evidence for the jury to find defendant guilty of first degree murder. Benegas and Waschke identified defendant as one of the two individuals who directed them to the apartment building at 512 South Chicago Avenue. Graefnitz went into the apartment building with defendant and Moore and was shot in the back. Moore testified that defendant was the shooter, and Watson testified that defendant told him that he had shot someone. After the shooting occurred, both defendant and Moore ran. A rational jury could easily have concluded that defendant performed the acts that caused Graefnitz's death. See *People v. Jackson*, 372 Ill. App. 3d 605, 612-13 (2007).

¶ 52 We reject defendant's attempt to challenge the jury's verdict based on the jury's answer to the sentence enhancement question. A jury's response to a sentence enhancement inquiry cannot be used for any purpose other than sentence enhancement. *People v. Reed*, 396 Ill. App. 3d 636, 646 (2009); *Jackson*, 372 Ill. App. 3d at 612. The jury's response cannot be used to challenge a guilty verdict. *Reed*, 396 Ill. App. 3d at 648. The jury's guilty verdict is controlling. *Id*. Since the jury's guilty verdict was supported by sufficient evidence, we affirm.

¶ 53 IV. Prior Consistent Statements

¶ 54 Defendant argues that it was error for the trial court to allow Moore to testify about prior consistent statements.

¶ 55 In order to preserve an error, there must be an objection at trial and a posttrial motion raising the issue. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). To overcome this forfeiture, we must determine whether the alleged error can be reviewed under the plain error doctrine. *People v. Curtis*, 354 Ill. App. 3d 312, 323-34 (2004). First, we must decide if an error occurred. *People v. Burgess*, 2015 IL App (1st) 130657, ¶ 179. If so, we must determine if the error is reversible. *Id*. ¶ 178. An error is reversible when: (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error; or (2) the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *Id*.

¶ 56 A witness's prior consistent statements are generally inadmissible. *People v. Miller*, 302 Ill. App. 3d 487, 491-92 (1998). However, prior consistent statements may be admitted where there is a charge that testimony has been recently fabricated or that the witness has a motive to testify falsely. *People v. Harris*, 123 Ill. 2d 113, 139 (1988).

¶ 57 Here, defense counsel repeatedly questioned Moore about his testimony that defendant told Watson that he "popped a nigg**," and suggested that Moore had never said that before trial. Defense counsel also repeatedly questioned Moore about the plea bargain he made with the State, suggesting that the plea bargain gave him a motive to testify untruthfully about defendant being the shooter. Such questioning justified the State's introduction of Moore's prior consistent statements that defendant was the shooter and that defendant told Watson that he had shot someone on the night of the shooting. Thus, there was no error in the trial court's admission of the prior consistent statements.

¶ 58 Moreover, if there was error, there was no plain error because the evidence in this case was not closely balanced. The evidence established that either Moore or defendant shot and killed Graefnitz in the course of an armed robbery. Moore testified that defendant was the shooter, and Watson confirmed that defendant told him he shot someone on the night of the shooting. Even if defendant was not the shooter, he was responsible for Graefnitz's death, as a participant in the robbery. See 720 ILCS 5/5-2(c) (West 2008); *People v. Johns*, 345 Ill. App. 3d 237, 242-45 (2003). Thus, the evidence was not so closely balanced that the improper admission of Moore's consistent statements could have affected defendant's right to a fair trial.

¶ 59 V. Cross-Examination

¶ 60 Defendant argues that he was improperly restricted from questioning Watson about his alleged fear of Moore.

¶ 61 The Confrontation Clause guarantees a defendant an opportunity to effectively cross-examine a witness; it does not guarantee cross-examination that is effective in whatever way, and to whatever extent, the defense wishes. *People v. Kirchner*, 194 Ill. 2d 502, 536 (2000). Where the trial court limited cross examination of a witness, the appellate court will reverse only if an

abuse of discretion resulting in manifest prejudice occurred. *People v. Price*, 404 Ill. App. 3d 324, 330 (2010).

¶ 62 The test of whether the trial court abused its discretion in limiting cross-examination is whether the limitation created a substantial danger of prejudice to the defendant by denying the defendant the right to test the truth of the testimony. *People v. Averhart*, 311 Ill. App. 3d 492, 497 (1999). The court looks to what the defendant was allowed to do, not what the defendant was prohibited from doing, to evaluate the constitutional sufficiency of cross-examination. *People v. Truly*, 318 Ill. App. 3d 217, 233 (2000). A court's ruling limiting the scope of examination will be affirmed unless the defendant can show his or her inquiry is not based on a remote or uncertain theory. *People v. Harris,* 384 Ill. App. 3d 551, 565 (2008).

¶ 63 The trial court properly exercises its discretion to preclude repetitive or unduly harassing testimony, or evidence that is not relevant or only marginally relevant. *Averhart*, 311 Ill. App. 3d at 500. A trial judge may properly limit the scope of cross-examination where a line of questioning is speculative, uncertain and not based on the evidence presented in the case. See *Harris*, 384 Ill. App. 3d at 566.

¶ 64 Here, the trial court did not abuse its discretion in limiting defendant's cross-examination of Watson. Defendant sought to question Watson regarding his alleged fear of Moore and his belief that Moore and/or "his people" had threatened him prior to trial. Any such testimony would have been so remote and speculative that the trial court's limitation did not create a danger of prejudice to defendant. See *People v. Green*, 339 Ill. App. 3d 443, 457 (2003).

¶ 65 VI. Sentence

¶ 66 Finally, defendant argues that the trial court abused its discretion in sentencing him to 55 years in prison for murder. He contends that the court failed to consider mitigating factors in

sentencing him, including his age, history of neglect, developmental delay, mental health history and lack of violent criminal history.

¶ 67 Imposition of a sentence is normally within a trial court's discretion. *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8. The trial court has broad discretion in sentencing because it is has seen all of the evidence and testimony firsthand. *People v. Malcolm*, 2015 IL App (1st) 133406, ¶ 65. A trial court's sentencing determination is reviewed with great deference. *Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8. A reviewing court cannot substitute its judgment for that of the trial court simply because it would weigh the aggravating and mitigating factors differently. *Malcolm*, 2015 IL App (1st) 133406, ¶ 65.

¶ 68 The applicable statutory range for murder with a firearm is 35 to 75 years. See 730 ILCS 5/5-8-1(a)(1)(d)(i) (West 2008). A sentence within the statutory limits will be deemed excessive and a result of an abuse of discretion only when it is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. *People v. Glazier*, 2015 IL App (5th) 120401, ¶ 22.

¶ 69 Here, the trial court considered the mitigating and aggravating factors and found that the aggravating factors far outweighed the mitigating ones because of defendant's conduct, including his behavior in juvenile detention, which showed a pattern of aggressiveness and violence. In this case, defendant's sentence of 55 years for murder, which was well within the statutory range, was not an abuse of discretion.

¶ 70 CONCLUSION

¶ 71 The judgment of the circuit court of Kankakee County is affirmed.

¶ 72 Affirmed.