2022 IL App (4th) 200329-U

NO. 4-20-0329

FILED
February 28, 2022
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Sangamon County
LARRY K. BROOMFIELD,	)	No. 15CF98
Defendant-Appellant.	)	
	)	Honorable
	)	John M. Madonia,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Knecht and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, holding the trial court did not abuse its discretion when it declined defendant's request to instruct the jury on involuntary manslaughter or when it sentenced defendant to a 30-year term in the Illinois Department of Corrections.

¶ 2 In a September 2019 trial, a jury found defendant, Larry K. Broomfield, guilty of first degree murder and further determined the State proved the additional allegation that during the commission of the murder defendant personally discharged a firearm that proximately caused death to the victim. The trial court ordered a presentence investigation report (PSI), and defendant appeared for sentencing in June 2020 following several continuances. The court sentenced defendant to 30 years in the Illinois Department of Corrections (DOC) followed by 3 years' mandatory supervised release (MSR).

¶ 3 Defendant filed two posttrial motions, a motion for a new trial and a motion to reconsider the sentence, but the trial court denied them both. On appeal, defendant argues the

trial court committed two errors, first by refusing to instruct the jury on involuntary manslaughter and, second, by imposing an excessive sentence, considering defendant's young age. We disagree and affirm the trial court's judgment.

¶ 4 I. BACKGROUND

¶ 5 This case arose out of a drug deal gone bad in January 2015, when Louis Tuttle was shot dead in Springfield, Illinois. In February 2015, pursuant to an automatic transfer to adult court (705 ILCS 405/5-130 (West 2014)), the State filed four criminal counts against the teenaged defendant, including one count of first degree murder (720 ILCS 5/9-1(a)(2) (West 2014)), a Class M felony; one count of felony murder, specifically, he committed first degree murder while committing armed robbery (720 ILCS 5/9-1(a)(3) (West 2014)), a Class M felony; and two counts of armed robbery (720 ILCS 5/18-2(a)(2), (4) (West 2014)), Class X felonies. Defendant was later indicted on the same four counts.

¶ 6 At defense counsel's request, and following a forensic psychiatric evaluation, defendant, who was 16 years old at the time of the shooting, was diagnosed with attention deficit hyperactivity disorder (ADHD), possible conduct disorder, and borderline intellectual functioning or mild mental retardation, and was found unfit for trial. After a commitment to the Illinois Department of Human Services for inpatient treatment, defendant was eventually restored to fitness in July 2016.

¶ 7 A. Lonnell Bates's Testimony

¶ 8 More than three years later, this matter proceeded to a jury trial. The State's evidence included testimony from 32 witnesses and scores of exhibits. Relevant to defendant's appeal is testimony from his codefendant, Lonnell Bates, on the final day of trial. In describing his relationship with defendant in 2014 and 2015, Bates testified they were "associates." Bates

confirmed that in January 2015, he sold the drug ecstasy, or "Molly." Bates testified that on January 26, 2015, he and defendant met with Tuttle to discuss a drug transaction and the parties exchanged phone numbers. Later that night, Bates and Tuttle exchanged text messages negotiating the quantity and price of ecstasy Tuttle had to sell. Bates testified defendant was present as he texted with Tuttle and they discussed the substance of the text messages.

¶ 9 Bates said he and defendant drove to meet Tuttle at an agreed-upon location. At the time of trial, Bates could not recall the address but acknowledged it could have been Edwards Street as suggested by the State. He drove the same black Ford Taurus he used earlier in the day when he and defendant met with Tuttle. Bates described his intended purpose for the meeting "was to go over there and first look at [the Molly] and make sure it was what [Tuttle] said it was and then buy it." Bates texted Tuttle when he and defendant arrived at the specified location, and Tuttle came out of a house and entered their vehicle, sitting behind the driver's seat occupied by Bates. Defendant sat in the front passenger seat. Bates testified the men resumed negotiating a price and defendant participated in those negotiations. Bates noted they agreed on $70, with Bates paying half and defendant paying half; however, since defendant had no money at that time, they agreed to return once they got their money together.

¶ 10 Bates testified, after returning to defendant's home, he, defendant, and defendant's cousin, Cortez Broomfield, drove to meet Tuttle, now for the third time. Bates drove, defendant sat in the front passenger seat, and Cortez sat in the back passenger seat. As before, Bates texted Tuttle when they arrived, and Tuttle entered the car. From the driver's side backseat, Tuttle and Bates exchanged the bag of ecstasy as they discussed the weight. Bates testified that as they discussed the drugs, defendant "pulled out a firearm. Pulled out a gun." He described the gun as a .45-caliber silver automatic handgun. Bates could not recall exactly what

defendant said as he produced the gun, but defendant "made reference to [']let me get that,[']" meaning the drugs. Bates testified defendant pointed the gun at Tuttle, Tuttle then reached for the gun, and the two men "struggle[d] over the gun." Bates stated he then heard seven or eight gunshots. When asked, "Who fired the gun?" Bates answered: "It was in [defendant's] possession, so [defendant]."

¶ 11 Bates stated he pulled the car over instantly and looked at defendant, who held out his hand and said he had been shot. Bates then looked in the backseat and saw Tuttle had been shot as he "slouched over towards" the passenger door. He noticed Tuttle's "legs was on the ground, but his body was slumped over." Bates recounted: "And then from there [defendant] gets out the car and opens the back door and grabs Tuttle and then I just drive off." Bates stated he abandoned the car in an alley off Adams Street, but he later retrieved and cleaned it.

¶ 12 Bates testified he was arrested the next day when police pulled over a different car he was riding in and found a firearm under a seat. Once at the police station, police interviewed Bates about the Tuttle murder, having found Tuttle's cell phone and learned he communicated with Bates the day before. Bates admitted he initially lied to police during those interviews.

¶ 13 On cross-examination, defense counsel questioned Bates on his motivation for testifying against defendant, noting he faced significant jailtime for his pending charges for murder, armed robbery, and concealment of a homicide in the Tuttle case and additional charges relating to possession of a firearm in another case. Bates testified he had no agreement with the State whereby he would receive a benefit for his testimony, but he said: "I mean, I'm hoping to go home one day, yes, I am." Defense counsel then proceeded to confront Bates with statements he told police during interviews in January and February 2015. Bates acknowledged the interviews and giving inconsistent statements throughout them. For example, Bates admitted

lying to police about his phone number, the car he was driving on January 26, 2015, and where he went that day.

¶ 14 Bates acknowledged he initially told police that Tuttle had a gun and defendant reached for the gun before it fired. Bates then acknowledged he again told police in a different interview that Tuttle brought a gun into the car, defendant grabbed the "nozzle" of the gun, and "[t]here was a tussle and somehow [defendant] ended up with the gun." Bates recalled telling police that defendant "did not mean to kill anybody." Bates stated he repeatedly told police defendant did not have a gun on the day of the murder, though now, during trial, he claimed he did. Bates acknowledged that during one police interview he said defendant "didn't want to shoot [Tuttle]," but "[h]e didn't have a choice." Bates admitted telling police: "If you want to shoot someone you're going to look at them to make sure. [Defendant] was not even looking as he shot." Bates noted he described defendant "as scared with his eyes closed." He said when he talked with police he was scared because he did not want to go to jail and he wanted to go home.

¶ 15 Bates testified that he eventually told police defendant had a .45-caliber handgun on the day of the murder. He had told police he saw defendant carry the gun in his pants. Bates testified that after police confronted him about his lies, he told them he did not know defendant planned to pull out a gun and rob Tuttle. Bates stated his trial testimony—that defendant alone produced a gun and shot Tuttle and Bates had nothing to do with what happened in the car other than buying drugs—was truthful and described what really happened that night.

¶ 16 On redirect examination, Bates again said he was not truthful in his initial police interviews because he was afraid of going to jail. Bates explained that he told police Tuttle had a gun "[b]asically out of fear I just had it just because I felt like if I said it that way it could help

me leave." He said that when he made false statements to police, he felt a "little bit" of loyalty to defendant.

¶ 17 After calling one more witness, the State rested. The defense informed the trial court defendant was waiting to see the court's rulings on proposed jury instructions before deciding whether or not to testify.

¶ 18 B. Jury Instructions

¶ 19 The trial court then heard arguments on several proposed jury instructions. Acknowledging Bates's prior inconsistent statements to police could be used as substantive evidence, the trial court indicated it would give jury instructions on second degree murder and self-defense if defendant requested them. Defense counsel then broached another instruction, and this colloquy followed:

> "MR. ELMORE [(DEFENSE ATTORNEY)]: I think there is some evidence on involuntary. There is a reckless. The jury could say that what happened in that car was reckless.
>
> THE COURT: I don't see that at all.
>
> MR. ELMORE: Shooting a gun 7 or 8 times in a car couldn't be deemed as reckless during the struggle?
>
> THE COURT: I don't know, counsel. I think that is an absolute stretch and I don't think anyone has ever considered that until just now as under the facts as exerted by Mr. Bates even looking most favorably I don't see an area of recklessness at all. Do you have an argument to make on whether or not recklessness—

MR. SHAW [(ASSISTANT STATE'S ATTORNEY)]: I don't believe the facts support that in this case.

THE COURT: I don't either. I think this is simply a case of either he needed to defend himself because someone else brought a gun to this and the jury could decide that his belief was unreasonable or totally justified under the other alternative they think that this was a robbery that went bad and someone died or that he duly intended all of this. I don't see recklessness and I don't see the facts warranted and I'm not going to give that as such.

MR. ELMORE: Do you want us to tender that instruction to you or are you comfortable with making this ruling and saying I'm denying it rather than tendering it?

THE COURT: You can propose an instruction and submit it for the court's consideration, but I don't see any recklessness involved in all the facts and looking at a scintilla of evidence I don't think this is a case at all about recklessness.

MR. ELMORE: For the record, we are asking for that instruction. I think the court is telling us that it will not be given so we will not be tendering it. Are you comfortable with that, Judge?

THE COURT: I've got a stack of proposed—I've got two stacks. *** In those proposed was there ever anything submitted regarding involuntary or reckless?

> MR. PERBIX [(ASSISTANT STATE'S ATTORNEY)]: Those all came from the state ***. There was never any involuntary manslaughter issue raised in either of the two sets, Your Honor.
>
> THE COURT: All right. Well, submit what you think you need to submit in order to preserve whatever arguments you want to preserve, but I do not see recklessness at all in this case. So that's my ruling. Anything further before we address this defendant?
>
> MR. WYKOFF [(DEFENSE ATTORNEY)]: No. We thank you for all the guidance that you just gave us, Your Honor."

It does not appear from the record that the defense tendered an involuntary manslaughter jury instruction for the trial court's consideration.

¶ 20 Following its ruling, the trial court briefly recessed to allow defense counsel to confer with defendant. Back on the record, defense counsel informed the trial court defendant decided not to testify and wanted to request jury instructions on second degree murder and self-defense. The trial court inquired of defendant to see if he made these decisions knowingly and voluntarily and concluded he did.

¶ 21 The jury eventually found defendant guilty of first degree murder and further found the State proved the additional allegation that defendant personally discharged a firearm that proximately caused death to another person. The jury found defendant not guilty of felony murder and armed robbery. The trial court dismissed the jury, ordered a PSI, and set the matter for sentencing.

¶ 22 C. Posttrial and Sentencing

¶ 23 Defendant moved for a new trial, alleging three grounds for either a new trial or a judgment of acquittal: (1) the State failed to prove him guilty beyond a reasonable doubt; (2) the trial court erred when it refused to instruct the jury on the offense of involuntary manslaughter; and (3) the jury's verdicts (guilty on first degree murder but not guilty on felony murder and armed robbery) were legally inconsistent and entitled him to new trial.

¶ 24 At the June 2020 sentencing hearing, the trial court took up defendant's motion for a new trial first. As to the involuntary manslaughter jury instruction, defendant argued, "there was some evidence of recklessness and that the instruction should have been given."

¶ 25 Defense counsel initially rested on its motion. The State addressed the involuntary-manslaughter-jury-instruction issue, arguing the issue was controlled by our supreme court's decision in *People v. McDonald*, 2016 IL 118882, ¶ 57, 77 N.E.3d 26, where the court held: "Given the dearth of evidence of recklessness, we conclude that the trial court did not abuse its discretion in refusing to give a jury instruction on involuntary manslaughter." The State argued that, like *McDonald*, there was a lack of evidence for recklessness here. Defense counsel responded by arguing:

> "I think the evidence could have been or the evidence did show that this was a struggle, that it was potentially a dope rip if you will and that went awry and his intentions were not to kill him but rather to steal the dope. And there was a struggle, and during that struggle his acts were reckless in that the weapon was discharged. That's our argument."

The trial court responded, "Yeah, I did not think sufficient evidence was presented at this trial to demonstrate recklessness on behalf of this Defendant," and, after addressing the other allegations, it denied defendant's motion and proceeded to sentencing.

¶ 26 The trial court informed the parties it had reviewed the PSI and invited them to propose additions, clarifications, or corrections. The trial court noted the defense's request that the PSI reflect both defendant's mother and stepfather were deceased and the State's request to update defendant's credit time to 1968 days in custody. For evidence in aggravation, the State presented testimony from Ryan Sims, a former sergeant in the Springfield Police Department, who testified to a 2014 incident where defendant was identified as the person who exited a vehicle and fired a gun at a porch, injuring five people. Through Sims's testimony, the State admitted a Twitter photo of defendant with a handgun while pulling out the magazine, captioned "380 on me, don't try me." Sims testified police never recovered the gun defendant allegedly used in the 2014 shooting. The State also read into the record a victim impact statement from the victim's (Tuttle's) grandparents. As for evidence in mitigation, the defense rested on the PSI.

¶ 27 In arguing for a higher-end sentence, the State noted defendant's history confirmed he was familiar with guns and this was not his first shooting. The State directed the trial court's attention to three statutory factors in aggravation: (1) defendant's conduct caused or threatened serious harm, (2) defendant's history of prior delinquency or criminal activity, and (3) a higher sentence is necessary to deter others from committing this same crime. The State asked the trial court to sentence defendant to "somewhere between 35 to 38 years" in DOC. Defense counsel, by contrast, highlighted defendant's young age (16 years, 4 months) when he committed this crime. Counsel asked the trial court to consider defendant's immaturity, his inability to consider risks and consequences, and his cognitive and developmental disabilities.

Defense counsel noted the PSI outlined defendant's ADHD and mental health issues and his need for medication. Counsel posited this case arose from defendant needing a ride from Lanphier High School and calling Bates when his stepfather did not show up to get him. Counsel argued Bates pressured defendant into robbing Tuttle. Counsel asked the court to "look also at [defendant's] family, his home environment, his educational and social background, his history of any parental neglect." Defense counsel stated, "by all accounts [defendant] was left to his own devices at probably 13, 14, 15 years of age to basically raise himself on the streets. He probably migrated to a street gang. And we all know where that leads young men." Defense counsel asked the trial court to impose the minimum 20-year sentence, maintaining such a sentence would still send a "strong message to [defendant] and to others that this conduct will not be tolerated."

¶ 28 In rendering the sentence, the trial court noted it considered the PSI, the evidence and arguments from the parties, sentencing alternatives (including the cost of incarceration), defendant's statement in allocution, the statutory factors in aggravation and mitigation, and reforms in juvenile sentencing. The trial court referenced two aggravating factors in particular: (1) defendant's history of delinquency and criminal activity and (2) the need for deterrence to stop the cycle of gun violence plaguing the community. The trial court declined to consider the State's argument that defendant's conduct caused serious harm. The trial court further noted the State was not asking it to impose the firearm sentencing enhancements. Considering the reforms in sentencing juveniles and the absence of any request for sentencing enhancements, the trial court identified the appropriate sentencing rage as 20 to 35 years in DOC. The trial court stated the sentence would be "solely based on [defendant's] conduct and his rehabilitation potential in light of all the evidence." The trial court observed the two factors in aggravation (defendant's history and deterrence) "move[ ] the needle in favor of longer sentences, somewhere at the

35-year range." However, the trial court then identified numerous factors in mitigation, including defendant's age, immaturity, peer pressure, extremely negative influences affecting his decision-making, his family, his home environment, education, social background, parental neglect, and physical abuse or other childhood trauma. The trial court sentenced defendant to 30 years in DOC, followed by 3 years' MSR, "taking into account [the] truth in sentencing correction that allows for a parole review after 20 years of serving a sentence." The trial court informed defendant he would have an opportunity to show he had been rehabilitated and could be released in 20 years or what would have been the minimum sentence.

¶ 29 The next day, defendant filed a motion to reconsider his sentence, alleging that "in concluding that the 30-year sentence was the appropriate sentence for this unique Defendant, the Court placed too much weight upon asserted factors in aggravation, and reciprocally too little weight on the advanced factors in mitigation, in addition to not fully considering the unique nature and circumstances of this offense, and the history and characteristics of this Defendant, particularly as related to the under-development of his juvenile mind." Defendant's motion also alleged that any sentence imposed upon a juvenile offender that is greater than 20 years and does not allow for early release is unconstitutional.

¶ 30 In July 2020, the trial court heard arguments on defendant's motion. Defense counsel urged the court to reconsider the sentence, pointing to the "ever evolving case law" regarding sentencing juvenile offenders. Counsel renewed its prior written and oral arguments in support of a lesser sentence. The State countered by noting, "absent any showing by the defense that there's any new evidence or anything that the Court failed to look at, that the [30-year] sentence was perfectly appropriate and within all the case law and within the statutory guidelines." The court reiterated it "consider[ed] all the statutory guidelines, newly developing

guidelines, [and] applied them to this Defendant's particular circumstances," and it denied defendant's motion.

¶ 31 This appeal followed.

¶ 32 II. ANALYSIS

¶ 33 Defendant argues the trial court committed two errors that warrant reversal and remand: (1) the trial court erred by rejecting defendant's request to instruct the jury on the lesser-included offense of involuntary manslaughter and (2) the trial court erred in imposing an excessive 30-year sentence by overemphasizing the need for deterrence and undervaluing significant mitigating evidence.

¶ 34 A. Involuntary Manslaughter Jury Instruction

¶ 35 Defendant maintains the trial court erred in denying his request for an involuntary manslaughter instruction because the record contained some evidence he acted recklessly. We disagree.

¶ 36 The test for determining whether a defendant is entitled to a jury instruction on a lesser-included offense is whether there is some evidence in the record that, if believed by the jury, will reduce the crime charged to a lesser offense. *McDonald*, 2016 IL 118882, ¶ 25. On appeal, the trial court's decision to deny a defendant's request for a certain jury instruction is reviewed under the abuse-of-discretion standard. *McDonald*, 2016 IL 118882, ¶ 42. An abuse of discretion will be found "where the trial court's decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it." *McDonald*, 2016 IL 118882, ¶ 32.

¶ 37 Here, defendant was charged with first degree murder, and he requested the trial court to instruct the jury on the lesser-included offense of involuntary manslaughter. First degree murder occurs when an individual "either intends to kill or do great bodily harm to that

individual or another, or knows that such acts will cause death to that individual or another; or *** he or she knows that such acts create a strong probability of death or great bodily harm to that individual or another." 720 ILCS 5/9-1(a)(1), (2) (West 2014). "A person who unintentionally kills an individual without lawful justification commits involuntary manslaughter if his acts whether lawful or unlawful which cause the death are such as are likely to cause death or great bodily harm to some individual, and he performs them recklessly." 720 ILCS 5/9-3(a) (West 2014).

¶ 38 "The difference between first degree murder and involuntary manslaughter lies in the defendant's mental state." *McDonald*, 2016 IL 118882, ¶ 51; see also *People v. Robinson*, 232 Ill. 2d 98, 105, 902 N.E.2d 622, 626 (2008) ("Involuntary manslaughter requires a less culpable mental state than first degree murder and is therefore a lesser-included offense of first degree murder."). "First degree murder may be committed either intentionally or knowingly, whereas involuntary manslaughter is committed unintentionally but recklessly." *People v. Maggio*, 2017 IL App (4th) 150287, ¶ 37, 80 N.E.3d 72.

¶ 39 A person acts intentionally "when his conscious objective or purpose is to accomplish that result or engage in that conduct." 720 ILCS 5/4-4 (West 2014). "A person acts recklessly when he 'consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow *** and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.' " *People v. Perry*, 2011 IL App (1st) 081228, ¶ 29, 962 N.E.2d 491 (quoting 720 ILCS 5/4-6 (West 2004)).

¶ 40 "In general, a defendant acts recklessly when he is aware that his conduct might result in death or great bodily harm, although that result is not substantially certain to occur. [Citations.] Reckless conduct generally involves a lesser degree of risk than conduct that creates

a strong probability of death or great bodily harm." *People v. DiVincenzo*, 183 Ill. 2d 239, 250, 700 N.E.2d 981, 987 (1998), *abrogated on other grounds by McDonald*, 2016 IL 118882, ¶¶ 23-25.

> "Although not dispositive, certain factors may suggest whether a defendant acted recklessly and whether an involuntary manslaughter instruction is appropriate. These include: (1) the disparity in size and strength between the defendant and the victim; (2) the brutality and duration of the beating, and the severity of the victim's injuries; and (3) whether a defendant used his bare fists or a weapon, such as a gun or a knife. In addition, an involuntary manslaughter instruction is generally not warranted where the nature of the killing, shown by either multiple wounds or the victim's defenselessness, shows that defendant did not act recklessly." *Perry*, 2011 IL App (1st) 081228, ¶ 30.

¶ 41 Our inquiry is whether there is "some evidence" to show defendant acted recklessly, thereby justifying an instruction on the offense of involuntary manslaughter. We must "focus[ ] [on] defendant's *intent* or *knowledge*—or lack thereof—at the time [of the shooting]." (Emphases in original.) *Maggio*, 2017 IL App (4th) 150287, ¶ 39. Defendant argues he provided evidence of his recklessness through Bates's prior inconsistent statements to police four years earlier. Bates testified that in one police interview, he told police defendant did not have a gun on the day in question, Tuttle brought the gun into the car, Tuttle brandished the weapon, defendant grabbed for the gun, and the gun went off while Tuttle and defendant wrestled over it. In another statement to police, Bates again said Tuttle brought the gun into the vehicle, he brandished it,

defendant grabbed the "nozzle" of the gun, Tuttle and defendant "tussle[d]," and defendant ended up with the gun. Bates claimed defendant did not mean to kill anybody, defendant did not want to kill Tuttle but had no choice, and defendant "was not even looking as he shot" because he was "scared with his eyes closed." Although at trial Bates disavowed these statements, the record shows the trial court allowed them in as substantive evidence when it indicated during the instruction conference, "[a]nd his statements were video-recorded even though they weren't played for the jury they are in the record substantively as prior inconsistent statements from the witness." In fact, the trial court decided to instruct the jury on second degree murder and self-defense based upon Bates's prior inconsistent statements, noting it was up to the jury to decide when Bates was telling the truth. The trial court, however, refused to instruct the jury on involuntary manslaughter because it did not see these statements, even if believed by the jury, as evidence of recklessness. We agree. Defendant's actions in these versions of events did not indicate he consciously disregarded an unjustifiable risk, nor were his actions a gross deviation from the standard of care a reasonable person would exercise in that situation. See *Perry*, 2011 IL App (1st) 081228, ¶ 29; 720 ILCS 5/4-6 (West 2014).

¶ 42 Bates's testimony presented three versions of what happened in the vehicle on January 26, 2015. In one version, his testimony on direct examination, defendant had a gun and brandished the weapon when the men were haggling over the weight of the drugs, saying, " [']let me get that,[’] " meaning the drugs. Then, according to Bates, Tuttle reached for the gun, the men struggled, and defendant shot Tuttle several times. This testimony supports the conclusion defendant acted intentionally because pulling a gun on a person and then shooting him multiple times indicates a "conscious objective" (720 ILCS 5/4-4 (West 2014)) "to kill or do great bodily harm" to the victim (720 ILCS 5/9-1(a)(1) (West 2014)). Likewise, this testimony suggests

defendant acted knowingly. Defendant brandishing a weapon before taking drugs from Tuttle and shooting him when Tuttle reaches for the gun shows he was "consciously aware" his conduct was "practically certain" to cause death or great bodily harm to Tuttle. See 720 ILCS 5/4-5(a), (b) (West 2014). Alternatively, this scenario does not suggest recklessness because of the fact the defendant was the person who produced a weapon and because of the nature of the killing—defendant inflicting multiple wounds to a cornered, defenseless victim—both of which are indicative of intentional behavior. *Perry*, 2011 IL App (1st) 081228, ¶ 30; *People v. Smith*, 2014 IL App (1st) 103436, ¶ 85, 16 N.E.3d 129.

¶ 43 In Bates's second version (from his first prior inconsistent statement), Tuttle produced the gun, defendant and Tuttle wrestled over the gun, and the gun went off, injuring both men. This does not constitute recklessness on defendant's part, but for an entirely different reason. Under this scenario, defendant trying to wrest the gun away from Tuttle shows he consciously disregarded a substantial and *justifiable* risk because, while it meant he may injure the victim during the struggle, he may also escape injury himself. See *People v. Castillo*, 188 Ill. 2d 536, 541, 723 N.E.2d 274, 277 (1999); *Smith*, 2014 IL App (1st) 103436, ¶ 82. Defendant's actions, therefore, could not be reckless. We find *Castillo* instructive. There, two witnesses testified Castillo and the victim wrestled over a gun when it fired and injured the victim. *Castillo*, 188 Ill. 2d at 538-39. Like this defendant, Castillo argued that his testimony "that he struggled with the victim after the victim drew a gun and threatened to injure him" "contained some evidence that his struggle with the victim over the gun was reckless." *Castillo*, 188 Ill. 2d at 541. But this court, and later our supreme court, found the testimony did not constitute some evidence of recklessness because it showed he "acted with regard to a *justifiable* risk of injuring the victim in order to protect himself." (Emphasis in original.) *Castillo*, 188 Ill. 2d at 541. Defendant's

actions do not show he "consciously disregard[ed] a substantial and unjustifiable risk" in these circumstances—a drug seller pulling a gun on him (the drug buyer) during the deal. Without recklessness, there can be no involuntary manslaughter instruction. If the jury believed this version of events, then it had the option of acquitting defendant pursuant to the self-defense instruction, which the trial court gave.

¶ 44 In Bates's third version (from his second prior inconsistent statement), Tuttle had the gun, defendant and Tuttle struggled for the gun, defendant ended up with the gun, and then he shot Tuttle multiple times while looking away with his eyes closed. According to Bates, in this scenario, defendant did not want to kill Tuttle but he had no other choice. For the same two reasons we outlined above—again focusing on defendant's intent or knowledge—this is not reckless conduct. First, defendant's struggle for the weapon to avoid sustaining an injury and injuring Tuttle was a justifiable risk. See *Castillo*, 188 Ill. 2d at 541; *Smith*, 2014 IL App (1st) 103436, ¶ 82. Second, defendant deciding to shoot the gun multiple times once he wrested it from Tuttle indicates intentional, and not reckless, conduct. See 720 ILCS 5/4-4 (West 2014); *Perry*, 2011 IL App (1st) 081228, ¶ 30.

¶ 45 Even though *McDonald* requires only "some evidence" of recklessness to warrant instructing the jury on involuntary manslaughter (*McDonald*, 2016 IL 118882, ¶ 25), like the trial court, we do not see evidence of recklessness before the jury. No matter which version of Bates's testimony the jury chose to believe, none of defendant's actions constituted evidence of recklessness. Consequently, we find the trial court did not abuse its discretion in denying defendant's request for an involuntary manslaughter instruction. See *People v. Mulvey*, 366 Ill. App. 3d 701, 711, 853 N.E.2d 68, 76 (2006) (stating "we may affirm the trial court on any basis that is supported by the record").

¶ 46 B. Excessive Sentence

¶ 47 Defendant next argues the trial court abused its discretion by imposing an excessive sentence, given defendant's age at the time of the offense (16 years, 4 months). He specifically contends his 30-year sentence "shocks the moral sense of the community" because the trial court overemphasized the need for deterrence and undervalued the many mitigating factors. We disagree.

¶ 48 A trial court enjoys broad discretion in imposing a sentence. *People v. Patterson*, 217 Ill. 2d 407, 448, 841 N.E.2d 889, 912 (2005). Absent an abuse of that discretion, this court will not disturb a sentence upon review. *People v. Hensley*, 354 Ill. App. 3d 224, 234, 819 N.E.2d 1274, 1284 (2004) (quoting *People v. Kennedy*, 336 Ill. App. 3d 425, 433, 782 N.E.2d 864, 871 (2002)). A trial court abuses its discretion "where the sentence is 'greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.' " *People v. Alexander*, 239 Ill. 2d 205, 212, 940 N.E.2d 1062, 1066 (2010) (quoting *People v. Stacey*, 193 Ill. 2d 203, 210, 737 N.E.2d 626, 629 (2000)). Similarly, a court can abuse its discretion if its sentencing decision is "arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Etherton*, 2017 IL App (5th) 140427, ¶ 26, 82 N.E.3d 693. We pay "great deference" to a court's sentencing judgment " 'because the trial court is generally in a better position than the reviewing court to determine the appropriate sentence.' " *People v. Hestand*, 362 Ill. App. 3d 272, 281, 838 N.E.2d 318, 326 (2005) (quoting *Stacey*, 193 Ill. 2d at 209).

¶ 49 "It is by now well established 'youth matters in sentencing.' " *People v. Murphy*, 2019 IL App (4th) 170646, ¶ 42, 145 N.E.3d 56 (quoting *People v. Holman*, 2017 IL 120655, ¶ 33, 91 N.E.3d 849). In less than 20 years, the law governing sentencing juveniles has

undergone significant legislative and judicial changes—on both the federal and state levels. In a trilogy of cases interpreting and applying the eighth amendment's prohibition on cruel and unusual punishments, the United States Supreme Court held death sentences for juveniles who commit murder (*Roper v. Simmons*, 543 U.S. 551, 578-79 (2005)) and mandatory life without parole (LWOP) sentences for juveniles who commit murder or any other offense to be unconstitutional. *Graham v. Florida*, 560 U.S. 48, 82 (2010) (barring LWOP for juveniles in nonhomicide offenses); *Miller v. Alabama*, 567 U.S. 460, 489 (2012) (barring LWOP for juveniles in homicide offenses). The Supreme Court based these holdings, in part, on science and the social sciences, opining, " 'developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds'—for example, in 'parts of the brain involved in behavior control.' " *Miller*, 567 U.S. at 471-72 (quoting *Graham*, 560 U.S. at 68).

¶ 50 Here in Illinois, our supreme court went beyond actual LWOP sentences for juveniles and addressed *de facto* LWOP, holding "that sentencing a juvenile offender to a mandatory term of years that is the functional equivalent of life without the possibility of parole constitutes cruel and unusual punishment in violation of the eighth amendment." *People v. Reyes*, 2016 IL 119271, ¶ 9, 63 N.E.3d 884. A few years later, our supreme court drew the line for *de facto* LWOP at 40 years, meaning "a prison sentence of 40 years or less imposed on a juvenile offender *does not* constitute a *de facto* life sentence in violation of the eighth amendment" while a prison sentence of more than 40 years does constitute a *de facto* life sentence. (Emphasis added.) *People v. Buffer*, 2019 IL 122327, ¶ 41, 137 N.E.3d 763.

¶ 51 Our General Assembly codified much of the case law governing juvenile sentencing, requiring that persons who commit crimes when under age 21 must be treated differently. Enacted in 2016, section 4.5-105 of the Uniform Code of Corrections (730 ILCS

5/5-4.5-105(a) (West 2016)) outlines nine additional mitigating factors a trial court must consider when sentencing "a person [who] commits an offense and the person is under 18 years of age at the time of the commission of the offense." Those factors include:

> "(1) the person's age, impetuosity, and level of maturity at the time of the offense, including the ability to consider risks and consequences of behavior, and the presence of cognitive or developmental disability, or both, if any;
>
> (2) whether the person was subjected to outside pressure, including peer pressure, familial pressure, or negative influences;
>
> (3) the person's family, home environment, educational and social background, including any history of parental neglect, physical abuse, or other childhood trauma;
>
> (4) the person's potential for rehabilitation or evidence of rehabilitation, or both;
>
> (5) the circumstances of the offense;
>
> (6) the person's degree of participation and specific role in the offense, including the level of planning by the defendant before the offense;
>
> (7) whether the person was able to meaningfully participate in his or her defense;
>
> (8) the person's prior juvenile or criminal history; and

> (9) any other information the court finds relevant and reliable, including an expression of remorse, if appropriate." 730 ILCS 5/5-4.5-105(a)(1) to (9) (West 2016).

Section 105 goes on to give sentencing courts discretion to decline to impose applicable sentencing enhancements related to possessing or discharging a firearm, or personally discharging a firearm "that proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person." 730 ILCS 5/5-4.5-105(b) (West 2016). Even when sentencing persons who committed first degree murder when 18 years of age or under, the trial court may "decline to impose the sentencing enhancements based upon the possession or use of a firearm during the commission of the offense." 730 ILCS 5/5-4.5-105(c) (West 2016). Even more recently, the legislature made further provision for young offenders by mandating parole review for "persons under the age of 21 at the time of the commission of an offense." 730 ILCS 5/5-4.5-115 (West 2020). With limited exceptions not applicable to this case, section 115(b) provides:

> "A person under 21 years of age at the time of the commission of first degree murder who is sentenced on or after June 1, 2019 (the effective date of Public Act 100-1182) shall be eligible for parole review by the Prisoner Review Board after serving 20 years or more of his or her sentence or sentences." 730 ILCS 5/5-4.5-115(b) (West 2016).

These were the sentencing laws in effect when the trial court sentenced defendant in June 2020. With these standards at mind, we consider defendant's argument that the trial court imposed upon him an excessive sentence.

¶ 52 In this case, defendant faced a maximum sentence of 85 years in DOC—up to 60 years for first degree murder, with a potential 25-year firearm enhancement. 730 ILCS 5/5-4.5-20(a) (West 2014); 730 ILCS 5/5-8-1(d)(ii) (West 2014). By contrast, he faced a minimum sentence of 20 years for first degree murder with no enhancements. 730 ILCS 5/5-4.5-20(a) (West 2014); 730 ILCS 5/5-4.5-105(c) (West 2020). Defendant acknowledges his 30-year sentence does not constitute a *de facto* life sentence. He likewise acknowledges the State did not request, nor did the trial court impose, a firearm enhancement. Nevertheless, defendant argues his sentence is excessive and consequently "violates the Illinois proportionate penalties clause because it shocks the moral sense of the community." Courts gauge the "moral sense of the community" by looking to the laws that govern the community. Indeed, our supreme court has noted "the clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures." (Internal quotation marks omitted.) *Buffer*, 2019 IL 122327, ¶ 34 (quoting *Atkins v. Virginia*, 536 U.S. 304, 312 (2002)).

¶ 53 Our review of the record reveals a thoughtful analysis from the trial court for a difficult sentencing decision the court admitted it "struggled with." The record confirms the trial court considered all appropriate statutory aggravating and mitigating factors before imposing the sentence, including the nine mitigating factors listed in section 105(a) of the Uniform Code of Corrections. The trial court began by noting it considered the PSI, the costs of incarceration, sentencing alternatives, the arguments from counsel, the evidence offered in aggravation and mitigation, defendant's statements, and the victim impact statement. The trial court expressly noted it "considered *** the additional factors in mitigation that are set forth in 730 ILCS 5/5-4.5-105. And there are factors that do apply in this circumstances." The trial court credited the State for not seeking the firearm enhancement, saying "it would be a major stretch for the

Court to impose an additional 25-year sentence on a 20-year sentence minimum for this Defendant under the totality of the circumstances. There's no doubt about that."

¶ 54 Given the State's decision not to seek the enhancement and the changes in the laws governing sentencing juveniles, the trial court believed the appropriate sentencing range to be 20 to 35 years. The trial court, however, explained it could not impose the minimum 20-year sentence defendant requested because that would mean no factors in aggravation applied to increase the sentence. It explained that imposing the minimum sentence "would just give the people of our community of specific neighborhoods no hope that there is any chance of ending this cycle," elaborating further, "no one deserves to go out to walk their dog in the morning or to take a breath of fresh air and have a morning cup of coffee and find a body discarded in the streets." Based on the evidence before it, the trial court ultimately found two aggravating factors: (1) defendant's history of juvenile delinquency, including the 2014 shooting incident Sims described earlier in the sentencing hearing and (2) the need for deterrence to end the cycle of gun violence in the community. The court opined these aggravating factors "move[d] the needle in favor of longer sentences, somewhere in the 35-year range."

¶ 55 But the trial court then turned its attention to the section 105(a) mitigating factors to balance the factors in aggravation. Noting the mitigating factors gave it "pause to impose such a lengthy sentence," the trial court identified the following section 105(a) factors, including:

> "this person's age, his level of immaturity at the time of the offense, the fact that there were peer pressures and extremely negative influences affecting his decision making, his family, his home environment, educational social background, including a history of parental neglect, physical abuse or other childhood

trauma, his potential for rehabilitation, circumstances of the offense, his degree of participation, specific role in the offense."

Returning to the changes in juvenile sentencing, the court reiterated it was "very cognizant of the changes in the law that are addressing these sort of reform issues." The trial court further emphasized defendant's sentence would be based on his conduct and "his rehabilitation potential in light of all the evidence." After imposing the 30-year sentence to DOC, to be served at 100%, the trial court informed defendant that section 115 of the Uniform Code of Corrections (730 ILCS 5/5-4.5-115 (West 2020)), which mandates parole review after 20 years, applied to him, saying: "So, if you continue to mature and if what the words you told this Court were true, you will have that opportunity after serving the minimum sentence of 20."

¶ 56 Defendant maintains the trial court erred by overvaluing deterrence as an aggravating factor, arguing that since juveniles are immature, reckless, and impetuous, they are less likely to consider potential future punishment before engaging in criminal behavior. See *Montgomery v. Louisiana*, 577 U.S. 190, 207 (2016). We note first that nothing in Illinois's sentencing scheme prohibits trial courts from considering the need for deterrence when sentencing a person who committed an offense as a juvenile. Section 105 of the Uniform Code of Corrections, which pertains to sentencing persons under the age of 18 at the time of the offense, identifies just one aggravating factor that is off limits for the court's consideration, specifically: "[I]f the [defendant], on advice of counsel chooses not to make a statement, the court *shall not* consider a lack of an expression of remorse as an aggravating factor." (Emphasis added.) 730 ILCS 5/5-4.5-105(a)(9) (West 2020). Other than this one factor, the trial court may consider the other statutory factors in aggravation found in the Uniform Code of Corrections, including the need for deterrence. See 730 ILCS 5/5-5-3.2(a)(7) (West 2020) (allowing for a more severe

sentence when "the sentence is necessary to deter others from committing the same crime"). We note second that the United States Supreme Court's statements concerning the efficacy of deterrence for juvenile offenders arise from a narrow context—death and LWOP sentences *vis-à-vis* the eighth amendment. When considering the second most severe penalty available under our country's criminal justice system (LWOP), the Court opined: "Because juveniles' lack of maturity and an underdeveloped sense of responsibility *** often result in impetuous and ill-considered actions and decisions, [citation] they are less likely to take a possible punishment into consideration when making decisions. This is particularly so when that punishment is rarely imposed." (Internal quotation marks omitted.) *Graham*, 560 U.S. at 72; see also *Miller*, 567 U.S. at 472 (noting the diminished effectiveness of deterrence for juveniles). Defendant clings to this principle to argue against the trial court valuing deterrence as an aggravating factor whatsoever. But we find two points striking here: first, the Supreme Court was considering the harshest of penalties available for juveniles and, second, the Court diminished deterrence for these harshest sentences at least partly because they were rarely imposed. As we understand it, the Supreme Court reasoned that imposing mandatory LWOP on juveniles could not be justified by deterrence because those sentences were rare and therefore less able to serve as examples for juvenile offenders. Term of years sentences for juvenile offenders, like we have here, are not as rare now as LWOP was a decade ago. Though *Graham*'s deterrence principle may be instructive, it is not dispositive here because, as defendant concedes, he did not receive an LWOP sentence. Like the trial court, we are cognizant of the evolving law governing the sentencing of juvenile offenders, and we see no prohibition on considering deterrence as an aggravating factor in either the relevant statutes or case law. We therefore reject defendant's argument that the trial court erred in overvaluing the need for deterrence.

¶ 57 As for defendant's argument that the trial court undervalued the factors in mitigation, we find the court sufficiently identified and weighed those factors given the evidence before it. The record detailed defendant's mental and emotional issues along with his immaturity, his limited education, family strife, and peer pressures. The trial court noted all of these factors. Since the trial court sat in the better position to assess these mitigating factors, having reviewed the record, and observed and interacted with defendant firsthand, we defer to its assessment. See *People v. Fern*, 189 Ill. 2d 48, 53, 723 N.E.2d 207, 209 (1999) ("A reviewing court gives great deference to the trial court's judgment regarding sentencing because the trial judge, having observed the defendant and the proceedings, has a far better opportunity to consider these factors than the reviewing court, which must rely on the 'cold' record.").

¶ 58 Finally, in re-raising the same issue he raised in his motion for reconsideration of sentence—"the Court placed too much weight upon asserted factors in aggravation, and reciprocally too little weight on the advanced factors in mitigation"—defendant effectively asks this court to reweigh the mitigating and aggravating factors and substitute a sentence different from the trial court's decision, which we cannot do. *People v. Coleman*, 166 Ill. 2d 247, 261-62, 652 N.E.2d 322, 329 (1995) (citing *People v. Pittman*, 93 Ill. 2d 169, 178, 442 N.E.2d 836, 840 (1982)). Defendant's sentence falls within the range of possible sentences for persons who commit first degree murder before age 18, as set by relevant statues and case law. Heeding the reasoning from higher courts that the laws of our State provide "the 'clearest and most reliable objective evidence of contemporary values' " (*Buffer*, 2019 IL 122327, ¶ 34 (quoting *Atkins*, 536 U.S. at 312)), we find defendant's sentence does not shock the moral sense of the community. There is nothing in the record to suggest the trial court's sentencing decision was fanciful, arbitrary, unreasonable, or manifestly disproportionate to the nature of the offense. *Etherton*,

2017 IL App (5th) 140427, ¶ 26. Accordingly, we conclude the court did not abuse its discretion in sentencing defendant to 30 years in DOC.

¶ 59 III. CONCLUSION

¶ 60 For the reasons stated, we affirm the trial court's judgment.

¶ 61 Affirmed.