2021 IL App (1st) 192186-U

FIFTH DIVISION
Order filed: November 19, 2021

No. 1-19-2186

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 11262-01
	)	
FREDERICK WOODS-RIVAS,	)	Honorable
	)	Thomas Joseph Hennelly,
Defendant-Appellant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: We affirmed the defendant's conviction over his contentions that the State failed to prove him guilty beyond a doubt, the circuit court improperly admitted prior statements made by the State's eyewitnesses, and his sentence was excessive.

¶ 2 Following a jury trial, the defendant, Frederick Woods-Rivas, was convicted of first-degree murder (720 ILCS 5/9-1(A)(1) (West 2014)). He was sentenced to a 37-year prison term for first-degree murder plus a 25-year firearm enhancement for a total of 62 years' imprisonment. On

appeal, he argues that the State failed to prove him guilty beyond a reasonable doubt, the circuit court erred when it admitted the prior statements of the State's eyewitnesses, and his 62-year sentence is excessive. For the reasons that follow, we affirm.

¶ 3 The defendant was charged by indictment with six counts of first-degree murder stemming from the April 26, 2014 shooting death of Jaquez Williams. Prior to trial, the State *nolle prossed* all but two counts of first-degree murder. The defendant elected a jury trial, which began on March 18, 2019.

¶ 4 At trial, Lavell Wright testified that, at approximately 2 a.m. on April 26, 2014, he was standing with Williams, whom he described as a close friend, Pam Lawson, and Lawson's boyfriend, Keith, outside of a sandwich shop on the 5500 block of West North Avenue. Two other individuals, Tweetie and Twon, were sitting in a car parked on the north side of North Avenue playing music. Williams stood a few feet behind and to the side of Wright and Lawson was in front of them talking to Tweetie and Twon through their car's open window. The area was well lit by streetlights and several businesses on the block that were open.

¶ 5 Just before 2 a.m., Wright saw someone he knew only as "Duck's son," whom he identified in court as the defendant, wearing a black hoodie and walking west on North Avenue toward them. According to Wright, the defendant lived in a nearby apartment with a man named "Duck," who had a number of young men living with him, all of whom are known as "Duck's son." Wright recognized the defendant because he had seen him on North Avenue every other day for six months. The defendant passed by Wright's group without incident.

¶ 6 Five to ten minutes later, Wright saw the defendant approaching his group again, this time traveling east on North Avenue, and wearing "all black." As the defendant passed behind him and

Williams, Wright heard a gunshot emanating from that direction. He ducked and turned to see Williams fall to the ground. Wright then ran toward Luna Avenue to get help from a friend who sold drugs in the alley and had a cellphone. As Wright ran toward the mouth of the alley, he saw the defendant running in front of him. Wright decided to return to the scene and discovered Williams still lying on the ground bleeding from his head. Wright left before the police arrived, stating that he did not usually talk to police about what goes on in the neighborhood.

¶ 7 Wright testified that three days later, on April 29, he contacted police and met with a detective at the police station. While at the station, he identified the defendant in a photo array as the individual who shot Williams. Wright viewed a lineup on May 28, 2014, where he again identified the defendant as the perpetrator. The State next asked Wright if he gave a videotaped statement to a detective and an assistant State's Attorney (ASA) in which he identified the defendant as the person he saw that night before he heard the gunshot. Wright testified that he did. The State also asked Wright if he testified before the grand jury on June 16, 2014. Wright responded that he did and that, during his grand jury testimony, he identified the defendant as the person he saw that night walk behind him and Williams before the shooting occurred.

¶ 8 During Wright's testimony, the State introduced footage from the night of the shooting captured by the sandwich shop's surveillance camera and still photos taken from the video.[1] Portions of the video were published in open court. Wright viewed clips from the footage and identified himself, Williams, and Lawson. When shown a still photo of an individual taken from the video, Wright testified that the photo depicted the defendant as he first passed by the group

[1] The parties stipulated that the sandwich shop's multi-camera video surveillance system was operating properly at the time of the shooting, but its time stamp was "56 minutes behind actual time."

traveling west on North Avenue. Wright acknowledged that the defendant was not wearing a black hoodie in the still photograph. The State played the portion of the surveillance video that captured the shooting. Wright identified the defendant as the individual wearing a black hoodie and entering the frame at timestamp 1:09:52. The moment Williams is shot is timestamped 1:10:07. Wright also viewed a clip of the aftermath of the shooting and identified the defendant as the individual in black running in front of him down the alley.

¶ 9 Wright testified that he had four prior felony convictions: burglary in 2010, possession of a controlled substance in 2012 and 2014, and unlawful use of a firearm by a felon in 2016. On cross-examination, Wright acknowledged that in 2014 he was originally charged with possession with intent to deliver and that his charge was reduced to simple possession while the instant case was pending. He denied that it was the State that reduced the charge. Wright also denied that it was his mother that initially called the police on April 29.

¶ 10 The State next called Lawson who testified that, at approximately 2 p.m. on April 25, 2014, she was shopping in a store on the 5500 block of North Avenue. While shopping, she saw Williams, whom Lawson described as her "god-baby," engaged in an altercation with another man. According to Lawson, the man, whom she recognized as someone she had seen "every other day" in the area, approached Williams and made a romantic overture. Williams "got very disrespectful" and told the man to leave him alone. The man went outside, and Williams followed. The man continued to make romantic overtures to Williams. According to Lawson, several "gangbangers" then jumped the man and told him to leave Williams alone. The man left, and Lawson heard him say that he would be back.

¶ 11 Later that evening, Lawson was hanging out on the 5500 block of North Avenue selling loose cigarettes. Also present were Williams and his friend Wright, who Lawson testified were selling drugs. Just before 2 a.m., two individuals named Tweety and Twon drove up to where Lawson was standing to purchase cigarettes from her. Lawson stood on the curb and spoke to Tweety and Twon through their car's open window. As she did so, she observed the man from earlier in the day approaching with a gun "in his sleeve." He was traveling east on North Avenue and wearing "all black," including a black hooded sweatshirt. Lawson testified that the man wore the hood of his sweatshirt over his head, but she was still able to see his face. When asked if she saw "the gunman" in court, Lawson answered that she did not. The State then asked Lawson to stand up and look around the court room. Lawson did so, and she again stated that she did not see him in court. The State next asked Lawson to come into the well of the courtroom and "have a look around." Lawson complied and stated once more that she did not see him in court.

¶ 12 Lawson returned to the stand and continued testifying. She explained that she stared at the man with the gun as he approached but then turned her head toward Tweety and Twon. She heard a gunshot coming from behind her and she turned to see Williams "sliding down" a nearby gate with a gunshot wound. She saw the man with the gun running toward Luna Avenue and Wright running after him. Lawson "stood right there panicking" and then ran in the opposite direction of the gunman. Lawson later returned to the scene and spoke with police. She did not tell them that she recognized the shooter from around the neighborhood.

¶ 13 On April 30, 2014, Lawson went to the police station where she viewed a photo array. She identified the defendant from the photo array as the man she saw with a gun that night. Lawson acknowledged that she gave a videotaped statement to police and the Assistant State's Attorney

on May 8, 2014, and that the recording was true and accurate. Lawson agreed that, in her videotaped statement, she told the ASA that she saw the perpetrator approaching her group with a gun in his hand, not in his sleeve. Defense counsel objected on hearsay grounds, arguing that the prior statement was not impeaching. The judge overruled defense counsel's objection. The State then asked Lawson if she stated on video that she saw the perpetrator raise the gun, point it at Williams' head, and open fire. Lawson replied, "Yes, ma'am." The State asked Lawson if that was the truth, and she again replied, "Yes, ma'am." The State then asked Lawson if she testified under oath in front of the grand jury. She acknowledged that she did. Lawson agreed that she testified to those same facts—that she saw the gun in the perpetrator's hand, not his sleeve, and that she saw the perpetrator shoot Williams in the head—in front of the grand jury. According to Lawson, she returned to the police station on May 28, 2014, and viewed a lineup where she also identified the defendant as the man she saw shoot Williams that night.

¶ 14 During Lawson's testimony, the State again played portions of the surveillance footage taken from the sandwich shop. Lawson viewed the footage and identified herself, Williams, Wright, Tweety, and Twon. Lawson acknowledged that the video depicted her ducking and facing toward Central Avenue when Williams, who was standing behind her, was shot. She testified that she could see the shooting from this position. At the close of Lawson's direct examination, the State asked Lawson to step down from the witness stand and look toward the defense table. The State asked Lawson if she saw the person who shot Williams sitting at that table, and Lawson identified the defendant as the shooter. When asked why she failed to identify the defendant when asked earlier to look around the court room, Lawson stated that she did not look in that direction.

¶ 15 Lawson acknowledged that she had two prior felony convictions: delivery of a controlled substance in 2007 and robbery in 2015. On cross-examination, Lawson testified that she was charged with robbery in 2014 while the instant case was pending. She pleaded guilty in March 2015 and received the minimum sentence of six years' imprisonment. Lawson also acknowledged that she did not tell the police or the ASA that she saw the defendant and Williams engage in an altercation the day of the shooting until September 27, 2018. Defense counsel played the surveillance video for Lawson. She acknowledged that the video depicted that she was looking into Tweety and Twon's car in the moments before the shooting occurred, but she stated that she was also looking at her surroundings.

¶ 16 Sergeant Michele Wood testified that, in April 2014, she was a homicide detective. On April 26, she was assigned to investigate Williams' murder. After speaking with witnesses, Sergeant Wood got a physical description of the shooter: male black or Puerto Rican, 5'7", and 135 to 150 pounds. Sergeant Wood testified that the defendant was approximately 5'8", 130 pounds, and a black Hispanic male. From the physical description, Sergeant Wood put together a photo array that included the defendant. According to Sergeant Wood, Wright viewed the photo array and identified the defendant on April 29, after Wright's mother—not Wright—contacted police. Sergeant Wood met with Lawson the next day and Lawson identified the defendant from a photo array. Sergeant Wood obtained an arrest warrant for the defendant that was executed on May 16, 2014, in Minnesota.

¶ 17 Assistant Cook County Medical Examiner Lauren Woertz, M.D., an expert in forensic pathology, testified that she conducted a postmortem examination and autopsy of Williams and photographed his body and clothing. Her postmortem report was admitted into evidence.

According to the report, Dr. Woertz observed a gunshot wound to the back of Williams' head. The bullet entered his head "just slightly right of the posterior midline" and exited "on the right side of the head just in front of the right ear." Soot was deposited around the entrance wound indicating close-range firing, that is, within 12 inches. Dr. Woertz determined that Williams' death was caused by a gunshot wound to the head and that the manner of his death was homicide.

¶ 18 The State then rested. The defendant did not testify, but he did present certified copies of Wright's and Lawson's convictions. He also introduced a stipulation stating that, on April 26, 2014, police recovered six bags containing what they suspected was cannabis from Williams' body at the Medical Examiner's Office and that four of the bags were tested and found to contain 2.6 grams of cannabis.

¶ 19 After the defendant rested, the court instructed the jury. Relevant here, the court instructed the jury that they could consider Lawson's prior statements as substantive evidence. During their deliberations, the jury sent out two notes. The first asked: "On the Map, [where] is the Alley and [where] is Faye[']s[?]". The second requested transcripts of Wright and Lawson's testimony. The court granted the latter request and responded to the former by stating, "You have received all the evidence in this case[;] please continue to deliberate." The jury found the defendant guilty of first-degree murder and of personally discharging a firearm that resulted in Williams' death.

¶ 20 Prior to sentencing, the defendant filed a motion arguing that the sentencing scheme was unconstitutional as applied to him based on *Alabama v. Miller*, 567 U.S. 460 (2012) and *People v. Buffer*, 2019 IL 122327. Specifically, the defendant argued that science suggests that a brain is not fully developed until age 25 and that the case law limiting the application of *Miller* to those under 18 is unconstitutional as applied to a 22-year-old like him. The court denied the motion.

¶ 21 At sentencing, the State presented a victim impact statement from the victim's sister, Monica Williams. The defendant then called his adoptive mother, Lin Ya Woods, as a witness in mitigation. According to Woods, the defendant came to her as a foster child when he was two years old after being found abandoned with his four siblings in a house with no food. Wood later learned of the defendant's mother's drug abuse. Woods was told that the defendant's parents were separated, and it was her understanding that his mother moved him and his siblings around to avoid having contact with their father. After the defendant and his siblings were taken into DCFS custody, both his mother and father remained in his life. His father visited his children every weekend, but he stopped suddenly when the defendant was five or six. Months later, Woods learned he had died in a car accident. The defendant was eventually moved to two other foster homes. He was kept with one older brother but separated from his other siblings at their mother's request. At some point, the siblings were returned to their mother's care for eight months but were again placed with Woods due to their mother's drug use and a violent fight with neighbors. Woods was able to adopt the defendant and his siblings when he was 12. When Woods adopted the defendant and his siblings, she had a total of 12 children, including her own and other foster children.

¶ 22 According to Woods, the defendant and his siblings received psychological care via DCFS twice a week. Woods said she was told that the defendant did not seem as traumatized as his siblings because he had bonded with her as though she was his biological caregiver. Woods described the defendant as responsible and obedient. The defendant and his siblings moved out of Woods's home after they got enough money to rent an apartment, but Woods continued to have a

relationship with him, and he called her daily and helped around the house without Woods asking. Woods had never known the defendant to be violent.

¶ 23 The defendant also submitted letters from various character witnesses. He elected to waive his right of allocution.

¶ 24 The presentence investigation report showed that the defendant had no prior convictions or adult arrests. The report also reflected that he graduated from high school and had a good relationship with his siblings, who visited him in jail, came to court, and financially supported him. The defendant denied ever being in a gang and denied alcohol or drug use.

¶ 25 During arguments, the State noted that, with the 25-year firearm enhancement, the defendant's sentencing range was between 45 years' to life imprisonment and asked the court to impose the maximum sentence. Defense counsel asked the court to impose the minimum sentence, arguing that the defendant had no prior arrests and that he was an excellent candidate for rehabilitation. Counsel also argued that the defendant's turbulent upbringing "colored" his ability to make decisions.

¶ 26 In imposing sentence, the court stated that the defendant had a side that was affable, sociable, and cordial with family and friends, and that he had bettered himself after his tough start in life. The court also noted that the defendant had a dark side, characterizing the murder as "cold, calculated, premeditated" rather than spontaneous. The court sentenced the defendant to 37 years for murder, plus 25 years for discharging a firearm, for a total of 62 years' imprisonment. This appeal followed.

¶ 27 On appeal, the defendant raises three arguments: the State failed to prove him guilty beyond a reasonable doubt; the circuit court deprived him of a fair trial by allowing the State to introduce

the two eyewitnesses' prior statements; and his 62-year sentence is excessive. We address each argument in turn.

¶ 28 The defendant first argues that the State failed to prove him guilty of first-degree murder beyond a reasonable doubt. Specifically, he argues that Lawson's and Wright's identification of him as the perpetrator were unreliable and their testimony incredible.

¶ 29 On a claim of insufficient evidence, we must determine whether, taking the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Gray*, 2017 IL 120958, ¶ 35. It is the responsibility of the trier of fact to weigh, resolve conflicts in, and draw reasonable inferences from the testimony and other evidence, and it is better equipped than this court to do so as it heard the evidence. *Id.*; *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. We do not retry a defendant; that is, we do not substitute our judgment for that of the trier of fact on witness credibility or the weight of evidence. *Gray*, 2017 IL 120958, ¶ 35. Contradictory evidence or minor or collateral discrepancies in testimony do not automatically render a witness's testimony incredible, and it is the task of the trier of fact to determine if and when a witness testified truthfully. *Id.* ¶¶ 36, 47. A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Id.* ¶ 35. When a finding of guilt depends on eyewitness testimony, we must decide whether the trier of fact could reasonably accept the testimony as true beyond a reasonable doubt. *Id.* ¶ 36.

¶ 30 "A single witness' identification of the accused is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification." *People v. Slim*, 127 Ill. 2d 302, 307 (1989). When assessing identification testimony, Illinois courts analyze

the following five factors set forth in *Neil v. Biggers*, 409 U.S. 188 (1972): (1) the witness's opportunity to view the defendant during the offense; (2) the witness's degree of attention at the time of the crime; (3) the accuracy of the witness's prior description of the defendant; (4) the witness's level of certainty at the identification; and (5) the length of time between the crime and the identification. *Slim*, 127 Ill. 2d at 307-08. We also consider a sixth factor, the witness's familiarity with the offender. *People v. McTush*, 81 Ill. 2d 513, 521 (1980). No single factor is dispositive; the test is one of the "totality of the circumstances." *People v. Smith*, 299 Ill. App. 3d 1056, 1062 (1998).

¶ 31 Turning to the first factor—whether the witness had a sufficient opportunity to view the defendant during the offense—we note that our task is to consider "whether the witness was close enough to the accused for a sufficient period of time under conditions adequate for observation." *People v. Tomei*, 2013 IL App (1st) 112632, ¶ 40. Here, both witnesses testified that they were among a small group of people standing on the sidewalk in front of a sandwich shop when they saw the defendant approaching them. According to Wright, the area was well lit by streetlamps and open businesses. Wright testified that the defendant approached their group twice, the first time without incident. When the defendant approached a second time, Wright stated that he was wearing "all black," including a black hooded sweatshirt. Both Wright and Lawson testified that they could see the defendant's face despite the fact that he wore the hood of his sweatshirt up. Lawson stated that she could see a gun on the defendant's person. According to both witnesses, as the defendant passed behind Williams, who was standing behind both of them on the sidewalk, they heard a gunshot and saw Williams fall to the ground with an injury.

¶ 32 The defendant argues that the witnesses' opportunity to view the defendant was marred by several facts: the shooting occurred quickly, it was late at night, and the witnesses were looking in the other direction when the shooting occurred. We disagree. Wright testified that the defendant approached his group twice within a five-to-ten-minute period and he recognized him as someone he frequently saw in the neighborhood. Wright also testified that the area was well lit and that several businesses on the street were open. Regarding the witnesses' positioning at the time of the shooting, we note that the witnesses both testified that the defendant was the only person who was behind them when the shooting occurred and that they turned to look in the direction of the gunshot after it occurred and only saw the defendant behind Williams. The medical examiner testified that Williams suffered a close-range gunshot wound to the back of his head. Moreover, the shooting was captured on surveillance video and the footage was shown to the jury who got to see for themselves where each party was oriented when the shooting occurred. Given this evidence, we find that the first factor cuts in favor of the reliability of the identification.

¶ 33 The second factor looks at the witness's degree of attention at the time of the crime. The defendant argues that the "commotion caused by the gunfire and the presence of at least four people nearby on the sidewalk and street provided multiple distractions to the witnesses." However, the witnesses' testimony suggests that they were paying attention to the defendant as he approached. Lawson testified stated that she stared at the defendant "for a while" as he approached, explaining that she liked to be aware of her surroundings. Wright similarly testified that he noticed the defendant approaching them because he was being vigilant for safety reasons given that it was a "rough" neighborhood. Moreover, we note that, in addition to being in a dangerous neighborhood, Lawson testified that they were engaged in illegal activity that night, which one might argue

provided them with added incentive to be mindful of their surroundings. Accordingly, we conclude that the second factor supports the reliability of the identification.

¶ 34 As to the third factor, the accuracy of any prior descriptions, the record does not show that either of the witnesses provided the police with a description of the shooter. Wright testified that he left the scene before the police arrived because he did not usually talk to police about what goes on in the neighborhood. Lawson acknowledged that she spoke with the police, but she did not provide them with a description of the shooter. The defendant urges us to find that this factor cuts against the reliability of the witnesses' identification because they both testified that they recognized the defendant as someone they knew from the neighborhood but failed to inform police of this fact or provide a description. We disagree with the defendant that Lawson and Wright's failure to provide a description to police the night of the shooting calls into question the reliability of their subsequent identifications. The defendant's critique goes more to the two witnesses' credibility rather than the reliability of their subsequent positive identification, and it was the jury's duty to consider and resolve any inconsistencies in the testimony. See *People v. Sutherland,* 223 Ill.2d 187, 242 (2006) ("The weight to be given the witnesses' testimony, the credibility of the witnesses, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact."). We conclude, therefore, that this factor is neutral.

¶ 35 The fourth factor examines the witnesses' level of certainty at the identification. However, neither witness testified regarding their level of certainty so that factor is neutral. Regarding the fifth factor, the length of time between the offense and the identification, Wright identified the defendant in a photo array three days of the shooting; Lawson did the same one day later.

Approximately four weeks after the shooting, both identified the defendant as the shooter in a lineup. This relatively short time favors the State. See *Slim*, 127 Ill. 2d at 313 (interval of 11 days between robbery and identification of defendant "not significant"); *People v. Williams*, 221 Ill. App. 3d 1061, 1068 (1991) (length of time between crime and identification favored State when witnesses identified the defendant in photo array "10 days to two weeks after the crime was committed"). The defendant acknowledges that Illinois courts have found identifications made after a longer interval reliable, but he urges us to look to other jurisdictions who have recognized that memory decay rates are exponential rather than linear, with the greatest proportion of memory loss occurring right after observation. The defendant, however, did not present any evidence before the trial court to show why the three-to-four-day delay would be likely to impact the reliability of the identification. Accordingly, we find that the fifth factor weighs in favor of Wright and Lawson's identification. See *People v. Simmons*, 2016 IL App (1st) 131300, ¶ 98.

¶ 36 As we noted above, there is an additional factor that courts consider when determining whether an identification is reliable: the witness's familiarity with the defendant. Here, both Lawson and Wright testified that they were familiar with the defendant. According to Wright, he saw the defendant on North Avenue every day for the six months leading up to the shooting. He also testified that he knew the defendant lived a block away from where the shooting occurred with a man named "Duck," which is where he got the nickname "Duck's Son." Lawson similarly testified that she saw the defendant on North Avenue "every other day." This factor also favors the reliability of the witnesses' identification.

¶ 37 In sum, we conclude that a majority of the factors support a finding that the State's two eyewitness' identifications of the defendant are reliable. Thus, we cannot say that the jury was

unreasonable for accepting the testimony as true beyond a reasonable doubt. *Gray*, 2017 IL 120958, ¶ 36.

¶ 38 The defendant nevertheless argues that Wright and Lawson's testimony was incredible and should be viewed with suspicion for several reasons aside from the *Biggers* factors. Specifically, the defendant contends that the following facts undermine their credibility: both witnesses had multiple felony convictions, both witnesses testified that they were extremely close with Williams but waited days before talking with police about the identity of the shooter, Lawson testified inconsistently about whether she actually saw the shooting, and Lawson failed to inform the police or the ASA of the prior incident between Williams and the defendant she witnessed until four years after the shooting. We note that the defendant is essentially asking us to reweigh the evidence in his favor, which we cannot do. *People v. Howery*, 178 Ill. 2d 1, 38 ("[I]t is the responsibility of the trier of fact to fairly *** resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts."). (1997). It is not the function of the reviewing court to retry the defendant. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). A court of review will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of witnesses. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). Our task is to review the evidence and determine whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational jury could have found the essential elements of the crime beyond a reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 280 (2009). Given the evidence, we conclude that a rational jury could find that the State proved the defendant guilty of first-degree murder beyond a reasonable doubt.

¶ 39 For his next assignment of error, the defendant maintains that multiple improper prior statements were admitted at trial. According to the defendant, the court erroneously allowed the State to introduce the videotaped statements and grand jury testimony of Lawson and Wright, which improperly bolstered their credibility and deprived him of a fair trial.

¶ 40 The defendant concedes that he did not preserve this issue for review, but he nevertheless seeks review under the first prong of the plain-error doctrine or, in the alternative, as a claim of ineffective assistance of counsel. A defendant who fails to preserve an issue in both a trial objection and a posttrial motion forfeits review of such issue unless he can establish plain error. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

¶ 41 Under the plain-error doctrine, a reviewing court may consider unpreserved error when "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and 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." *People v. Sargent*, 239 Ill. 2d 166, 189 (2010). However, before considering whether the plain-error exception to the rule of forfeiture applies, a reviewing court conducting plain-error analysis must first determine whether an error occurred, as "without reversible error, there can be no plain error." *People v. McGee*, 398 Ill. App. 3d 789, 794 (2010). Here, we find no error.

¶ 42 The defendant maintains that the court admitted prior statements made by Lawson and Wright that were not admissible as either prior consistent or prior inconsistent statements. Specifically, the defendant takes issue with the admission of Lawson and Wright's videotaped

statements and their grand jury testimony. The State responds that the prior statements were properly admitted.

¶ 43 We turn first to Lawson's prior statements. At trial, Lawson testified that she saw the defendant approaching with a gun "in his sleeve." She also testified that she did not see the defendant shoot Williams, but she heard the gunshot and turned to see Williams collapse. The State then elicited from Lawson that she had given a videotaped statement to a detective and an ASA, the content of which was true and correct. When asked if, during that statement, she told the detective and ASA that she saw a gun in the shooter's hand, Lawson replied, "Yes, ma'am." The defense objected, arguing that the prior statement was not impeaching. The State argued that Lawson testified at trial that she saw a gun in the shooter's sleeve, and the court allowed the State to continue. The State also asked Lawson if she told the detective and ASA that she saw the defendant raise the gun and point it at Williams' head. She again replied, "Yes, ma'am." When asked at trial if she, in fact, saw the defendant point the gun at Williams' head, Lawson answered: "All I heard -- I seen him was a hand [*sic*] holding the gun and it went off behind [Williams'] head and he slid down the gate."

¶ 44 The State also asked Lawson during her testimony about her appearance before the grand jury. The State read Lawson a portion of her grand jury testimony, and she agreed she told the grand jury the following facts: she saw a gun in the shooter's hand when he got within two or three feet of her; she looked away from the shooter and toward the car containing Tweety and Twon; she then looked back at Williams, which was when she saw the shooter, who was behind Williams, hold a gun to Williams' head and shoot him; and no one else was with the shooter at the time.

¶ 45 The defendant maintains that none of Lawson's prior statements were admissible as either prior consistent or inconsistent statements. The State responds that the statements were properly admitted as prior inconsistent statements pursuant to section 115-10.1 of the Criminal Code (Code) (725 ILCS 5/115-10.1) (West 2018).

¶ 46 Generally, a hearsay statement—an out-of-court statement offered for the truth of the matter asserted—is not admissible unless the statement falls within a recognized exception to the hearsay rule. *People v. Caffey*, 205 Ill. 2d 52, 88 (2001). However, section 115-10.1 of the Code creates a statutory exception—applicable only in criminal cases—to the general bar against hearsay statements, allowing a party to introduce a witness's prior inconsistent statement as substantive evidence. A prior inconsistent statement is admissible as substantive evidence only if the requirements of section 115-10.1 are met. *People v. Brothers*, 2015 IL App (4th) 130644 ¶ 65. In addition, the prior inconsistent statement must be relevant and material. *People v. Bonds*, 391 Ill. App. 3d 182, 195 (2009) (*abrogated on other grounds by People v. Williams*, 235 Ill. 2d 286 (2009)).

¶ 47 Section 115-10.1 states as follows:

> "Admissibility of Prior Inconsistent Statements. In all criminal cases, evidence of a statement made by a witness is not made inadmissible by the hearsay rule if
>
> (a) the statement is inconsistent with his [or her] testimony at the hearing or trial, and
>
> (b) the witness is subject to cross-examination concerning the statement, and
>
> (c) the statement—
>
> (1) was made under oath at a trial, hearing, or other proceeding, or

> (2) narrates, describes, or explains an event or condition of which the witness had personal knowledge, and
>
> * * *
>
> (C) the statement is proved to have been accurately recorded by a tape recorder, videotape recording, or any other similar electronic means of sound recording.
>
> Nothing in this Section shall render a prior inconsistent statement inadmissible for purposes of impeachment because such statement was not recorded or otherwise fails to meet the criteria set forth herein." 725 ILCS 5/115-10.1 (West 2018).

¶ 48 The parties initially dispute whether Lawson's prior statements were, in fact, inconsistent with her trial testimony. "A statement's consistency is measured against the witness's trial testimony." *People v. Guerrero*, 2021 IL App (2d) 190364, ¶ 50 (citing *People v. Johnson*, 385 Ill. App. 3d 585, 608 (2008)). The witness's prior statement need not directly contradict his or her trial testimony to be considered inconsistent. *People v. Flores*, 128 Ill. 2d 66, 87 (1989). For example, a witness's evasive answers, silences, and changes in position (*id.*); inability to recall (*People v. Martin*, 401 Ill. App. 3d 315, 319 (2010)); and omission of "a significant matter that would reasonably be expected to be mentioned if true" (*People v. Zurita*, 295 Ill. App. 3d 1072, 1077, (1998)) at trial have been deemed inconsistent with the witness's prior statements. The determination of whether a statement is inconsistent is left to the trial court's discretion. *Flores*, 128 Ill. 2d at 87-88.

¶ 49 According to the State, Lawson's complained-of prior statements were inconsistent with her trial testimony on material points: whether the defendant had a gun in his hand when he

approached and whether she turned away from the defendant just before she heard the shot that killed Williams. The defendant responds that Lawson's testimony at trial was generally consistent with her prior statements on the videotape and to the grand jury.

¶ 50 After review, we agree with the State that Lawson's prior statements were inconsistent with her trial testimony. Lawson's testimony at trial indicated that she saw the defendant approaching with a gun protruding from his sleeve and that she did not actually see the defendant shoot Williams because she turned away just before it occurred. In her prior statements, Lawson stated that she saw the defendant with a gun in his hand and that she initially turned away, but she looked back again in time to see the defendant raise the gun, point it at Williams' head, and shoot Williams. These versions of events are not consistent with each other. Moreover, the inconsistencies cut to the heart of the State's case that the defendant was, in fact, the person who shot and killed Williams. Consequently, we find that the circuit court did not abuse its discretion when it determined that Lawson's prior statements were inconsistent with her trial testimony.

¶ 51 Having so determined, we also conclude that her prior statements meet the remaining requirements of section 115-10.1. Lawson's videotaped statement, which she acknowledged was true and accurate, meets the requirements of section 115-10.1(c)(2)(C) in that it narrates an event of which she had personal knowledge; namely, the shooting of Williams that occurred mere feet from her. See 725 ILCS 5/115-10.1(c)(2)(C) (West 2016). Her grand jury testimony meets the requirements of section 115-10.1(c)(1) since it was made under oath. See 725 ILCS 5/115-10.1(c)(1) (West 2016). Accordingly, we conclude that Lawson's prior inconsistent statements were admissible pursuant to section 111-10.1 of the Code.

¶ 52 The defendant nevertheless argues that Lawson's statements should not have been admitted into evidence because her trial testimony did not affirmatively damage the State's case, citing *People v. Cruz*, 162 Ill. 2d 314, 361 (1994). The State contends that section 115-10.1 of the Code does not contain any such requirement. We agree with the State.

¶ 53 Illinois Supreme Court Rule 238(a) states that "[t]he credibility of a witness may be attacked by any party, including the party calling the witness." Ill. S. Ct. R. 238(a) (eff. April 11, 2001). However, a party may impeach his or her own witness's credibility with prior inconsistent statements only when the witness's trial testimony affirmatively damages the impeaching party's case. See, e.g., *People v. Wilson*, 2012 IL App (1st) 101038, ¶ 44. This is known as the "affirmative damage" requirement. However, contrary to the defendant's argument, section 115-10.1 of the Code does not contain any such requirement. Consequently, the "affirmative damage" requirement the defendant wishes us to impose on Lawson's prior statements is only applicable when the prior inconsistent statement is being used for the limited purpose of impeachment. *People v. Sangster*, 2014 IL App (1st) 113457, ¶ 62 ("If a prior inconsistent statement is not admissible as substantive evidence [pursuant to section 115-10.1], that statement can only be used for impeachment when the testimony of that witness does "affirmative damage" to the party's case."). As mentioned above, Lawson's prior statements were admitted as substantive evidence pursuant to section 115-10.1 of the Code, not for impeachment purposes. We, therefore, conclude that the circuit court did not err when it admitted Lawson's prior statements into evidence.

¶ 54 The defendant also challenges the circuit court's admission of Wright's prior statements, arguing that they were not admissible as either prior consistent or inconsistent statements. The

State responds that Wright's prior statements were admissible as statements of identification pursuant to section 115-12 of the Code (725 ILCS 5/115-12 (West 2016)).

¶ 55 At trial, Wright testified that he twice saw the defendant approach the group he was standing with on the night Williams was shot and killed. The first time the defendant approached, he passed by without incident. The second time he approached, he was dressed in "all black." According to Wright, when the defendant passed behind him, where Williams was standing, he heard a gunshot and turned to see Williams collapse. Wright testified that he identified the defendant as the person he saw that night in a photo array and in a lineup. He also testified that he identified the defendant in a videotaped statement and in his testimony in front of the grand jury.

¶ 56 As a general matter, proof of a prior consistent statement made by a witness is inadmissible hearsay when used to bolster a witness's testimony. *People v. Heard*, 187 Ill. 2d 36, 70 (1999).

¶ 57 However, section 115-12 of the Code states as follows:

> "A statement is not rendered inadmissible by the hearsay rule if (a) the declarant testifies at the trial or hearing, and (b) the declarant is subject to cross-examination concerning the statement, and (c) the statement is one of identification of a person made after perceiving him." 725 ILCS 5/115-12 (West 2018).

¶ 58 That prior statements of identification are not regarded as hearsay finds further support in Illinois Rule of Evidence 801(d)(1)(B) (eff. Jan. 1, 2011), which provides:

> "(d) Statements Which Are Not Hearsay. A statement is not hearsay if
>
> (1) Prior Statement by Witness. In a criminal case, the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is

* * *

(B) one of identification of a person made after perceiving the person."

¶ 59 Thus, the general rule prohibiting testimony of prior consistent statements by witnesses does not apply to statements of identification. *People v. Shum*, 117 Ill. 2d 317, 342 (1987). Furthermore, our supreme court has held that a statement of identification includes the entire identification process. *People v. Tisdel*, 201 Ill. 2d 210, 219 (2002).

¶ 60 The defendant nevertheless argues that Wright's prior statements of identification made in the videotaped statement and in front of the grand jury were inadmissible prior consistent statements. In essence, he argues that those particular prior consistent statements were cumulative and added nothing new because the State had already elicited testimony that Wright identified the defendant in a photo array and in a lineup. Thus, the defendant argues, the only purpose the prior consistent statements served was to bolster Wright's testimony, which is improper. In so arguing, the defendant acknowledges section 115-12 of the Code, but he argues that he is still afforded all the protections that otherwise exist in our rules of evidence. We agree. However, as previously mentioned, the Rules of Evidence also allow for the admission of prior statements of identification as an exception to the hearsay rule. And there can be no doubt that the complained of prior statements are statements of identification. None of the cases the defendant cites support his argument that the State may introduce only some, but not all, of a witness's statements of identification. Moreover, no such limitation exists in section 115-12 of the Code or in Rule 801(d)(1)(B). Accordingly, we find that the circuit court did not err when it admitted Wright's prior statements of identification into evidence.

¶ 61 Because we conclude that the circuit court committed no error, there can be no plain error. *People v. McGee*, 398 Ill. App. 3d 789, 794 (2010). Having so concluded, we necessarily reject the defendant's claim that her counsel was ineffective for failing to raise the issue of the court's improper admission of prior statements. As mentioned, the defendant has not shown that the trial court improperly admitted Wright and Lawson's prior statements. Accordingly, the defendant cannot succeed on his ineffective assistance of counsel claim because he cannot show that he was prejudiced by counsel's failure to object. See *Strickland*, 466 U.S. 668, 687 (1984) (holding that a defendant must show, both, that counsel's performance was deficient and that the deficient performance prejudiced the defendant).

¶ 62 The defendant's final contention on appeal is that his 62-year sentence is excessive given his personal history, the circumstances of the offense, his youth, and his potential for rehabilitation. Consequently, the defendant asks this court to reduce his sentence to the statutory minimum of 45 years' imprisonment or remand this matter to the circuit court for resentencing with a recommendation as to the appropriate sentence.

¶ 63 The Illinois Constitution requires that a trial court impose a sentence that reflects both the seriousness of the offense and the objective of restoring the defendant to useful citizenship. Ill. Const. 1970, art. I, § 11; *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 27. In reaching this balance, a trial court must consider a number of aggravating and mitigating factors, including the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Alexande*r, 239 Ill. 2d 205, 213 (2010). Absent some indication to the contrary, other than the sentence itself, we presume the trial court properly considered all relevant mitigating factors presented. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19.

¶ 64 Ultimately, the trial court is in the superior position to weigh the appropriate factors and so its sentencing decision is entitled to great deference. *Id.* Where that sentence falls within the statutory range, it is presumed proper and will not be disturbed on review absent an abuse of discretion. *Alexander*, 239 Ill. 2d at 212-13. An abuse of discretion exists where the sentence imposed is at great variance with the spirit and purpose of the law, or is manifestly disproportionate to the nature of the offense. *Alexander*, 239 Ill. 2d at 212.

¶ 65 Here, the defendant was convicted of first-degree murder while discharging a firearm and sentenced to a term of 62 years' imprisonment. The sentencing range for first-degree murder is between 20 to 60 years' imprisonment. 730 ILCS 5/5-4.5-20(a) (West 2014). Additionally, a person found to have discharged a firearm that proximately caused death during the commission of first-degree murder shall have a term of 25 years to life imposed in addition to the sentence for murder. 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2014). Accordingly, the defendant's 62-year sentence falls well within the permissible statutory range and, thus, we presume it proper. *People v. Wilson*, 2016 IL App (1st) 141063.

¶ 66 The defendant does not dispute that his sentence is within the applicable sentencing range and is, therefore, presumed proper. Rather, he argues that his sentence does not reflect that several mitigating factors were present, such as his difficult childhood or his potential for rehabilitation. Regarding his potential for rehabilitation, the defendant notes that he had no prior arrests as an adult, graduated from high school, worked consistently for a decade before his arrest, and earned several certificates of achievement and completion while in jail. Moreover, the defendant argues that the circuit court "erred when it unequivocally failed to consider that, at 22 years old, [his] brain was still developing, and he was not incorrigible or incapable of rehabilitation."

¶ 67 Insofar as the defendant's claim is based on "recent developments in the law" regarding youthful offenders, those legal developments simply do not apply to him. The authority relied upon prohibits mandatory life-without-parole for juvenile offenders (*Miller v. Alabama*, 567 U.S. 460 (2012)) or a term of years that amounts to the functional equivalent, referred to as *de facto* life, which is a prison term greater than 40 years (*People v. Buffer*, 2019 IL 122327, ¶ 41) unless a court gives special consideration to a juvenile's youth and its attendant circumstances (*People v. Holman*, 2017 IL 120655, ¶¶ 43-44; *People v. Lusby*, 2020 IL 124046, ¶¶ 33, 52). But the United States and Illinois Supreme Courts have only recognized these protections for juvenile offenders, that is persons under the age of 18 at the time of their offense. *People v. Harris*, 2018 IL 121932, ¶ 61. The defendant was not under age 18 at the time he shot and killed Williams. Some appellate court decisions have found some young adults may assert age-based claims challenging their sentences as applied under the proportionate penalties clause of the Illinois Constitution. See, *e.g.*, *People v. Minniefield*, 2020 IL App (1st) 170541 (remanding for 19-year-old offender to develop the record in postconviction proceedings to demonstrate how the evolving science of brain development in young adults may affect his 50-year sentence). But no court has extended these considerations for an offender who was over age 21. See *People v. Rivera*, 2020 IL App (1st) 171430, ¶¶ 25-27 (declining the same for offenders over 21). Thus, with the defendant being almost 23 years old at the time of the murder (22 years, 11 months), our precedent does not support that the trial court was required to give special consideration to his youth and its attendant circumstances in sentencing. For these reasons, the circuit court was not required to give special consideration to the defendant's age and, therefore, did not err on this basis.

¶ 68 Regarding the defendant's other claims of error, we note that, absent some indication to the contrary, other than the sentence itself, we presume the trial court properly considered all relevant mitigating factors presented. *Sauseda*, 2016 IL App (1st) 140134, ¶ 19. As such, in order to prevail on his argument, the defendant "must make an affirmative showing [that] the sentencing court did not consider the relevant factors." *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38. He cannot make such a showing here because the record reflects that the court considered all evidence in mitigation.

¶ 69 To begin, we note that it is not necessary for the circuit court to "detail precisely for the record the exact thought process undertaken to arrive at the ultimate sentencing decision or articulate its consideration of mitigating factors." *People v. Abrams*, 2015 IL App (1st) 133746, ¶ 32; *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). That said, the record shows that the circuit court expressly considered the relevant factors in reaching its sentencing decision. In announcing its decision, the court stated that it considered the evidence at trial, the PSI, the evidence in aggravation and mitigation, the financial impact of incarceration, the defendant's potential for rehabilitation, the arguments of counsel, the victim impact statement, and the several certificates and letters submitted by the defense. It noted that the defendant had "a tough and difficult start," "is affable and social and cordial with family and friends," and had "bettered himself." The court also noted, however, that the evidence at trial showed the defendant had "a darker side" and that he had committed a "cold, calculated, premeditated" murder. In rejecting the State's request for a maximum sentence, the court noted that the defendant had no prior criminal convictions. Regarding defense counsel's request for a minimum sentence of 45 years, the court rejected that sentence as inappropriate due to the "circumstances surrounding the shooting and cold-blooded

nature of the shooting." The court then imposed a sentence of 62 years' imprisonment. See *Busse*, 2016 IL App (1st) 142941, ¶ 28 ("In fashioning the appropriate sentence, the most important factor to consider is the seriousness of the crime."); see also *People v. Coleman*, 166 Ill. 2d 247, 261 (1995) ("A defendant's rehabilitative potential * * * is not entitled to greater weight than the seriousness of the offense.").

¶ 70 Given that all of the factors the defendant raises on appeal were discussed in his PSI report or in arguments in mitigation, he essentially asks us to reweigh the sentencing factors and substitute our judgment for that of the circuit court. This we cannot do. See *Busse*, 2016 IL App (1st) 142941, ¶ 20 (explaining that a reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently). As the circuit court is presumed to have considered all evidence in mitigation, and the record suggests that it did, we find that the circuit court did not abuse its discretion in sentencing the defendant to 62 years' imprisonment for committing first-degree murder. See *Alexander*, 239 Ill. 2d at 212-14.

¶ 71 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 72 Affirmed.