NOTICE
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2026 IL App (5th) 250082-U

NO. 5-25-0082

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Washington County.
	)	
v.	)	No. 23-CF-84
	)	
ARRION T. SANDERS,	)	Honorable
	)	Daniel J. Emge,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HACKETT delivered the judgment of the court.
Presiding Justice Cates and Justice McHaney concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the defendant's conviction for second degree murder where the evidence was sufficient to support the jury's finding that the defendant did not act in defense of a person. We also affirm the defendant's sentence as the trial court did not abuse its discretion in sentencing him to 30 years in the Illinois Department of Corrections.

¶ 2 Following a jury trial, the defendant, Arrion T. Sanders, was convicted of second degree murder. Thereafter, the circuit court of Washington County sentenced him to 30 years in the Illinois Department of Corrections (IDOC). The defendant appeals, arguing that the State failed to prove, beyond a reasonable doubt, that he did not reasonably believe that he needed to act in defense of others; and that the trial court abused its discretion in sentencing him to the maximum extended-term sentence. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On July 24, 2023, the State charged the defendant with three counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2) (West 2022)) for the shooting death of Montez Pearson. Thereafter, on August 7, 2023, the defendant was indicted on five counts of first degree murder. Kevin Loucks and Milton Robinson were also indicted in connection with the shooting. On November 21, 2023, the defendant filed a disclosure of affirmative defense, which stated that he intended to assert, at trial, justifiable use of force as an affirmative defense.

¶ 5 On June 24, 2024, the jury trial commenced, and the following testimony was presented. Loucks, who was testifying under use immunity,[1] testified that he had already been convicted for his involvement in this case. Loucks explained that his now-deceased wife, Velvet Lovell, had severe mental health issues and a problem with drugs. She often left their Belleville home and was found in the middle of the street directing traffic. On three or four occasions, the police found her and took her to the hospital. At times, the defendant helped look for Lovell when she went missing.

¶ 6 Loucks testified that one evening in mid-July, he was in his bedroom when either the defendant or Robinson told him that Lovell had left the house with Pearson. Loucks and Pearson had previous disagreements because Pearson had stolen some guns and drugs from Loucks. Upon learning that Lovell was with Pearson, Loucks grabbed a couple of pellet guns and a 12-gauge shotgun and went to look for her in his Ford Explorer. The defendant and Robinson also went with him. Loucks explained that he brought the guns with him because he knew that Pearson also had guns.

[1]Use immunity in Illinois bars the government from using a witness's compelled testimony, or any evidence derived directly or indirectly from it, against that witness in a subsequent criminal prosecution. 725 ILCS 5/106-2.5 (West 2022).

¶ 7 Loucks testified that Robinson was sitting in the front passenger seat, and since Loucks had taken out the vehicle's middle row of seats, the defendant was sitting in the "back back seat." Loucks noted that Robinson had one of the pellet guns and the other two guns were in the back with the defendant. After a short drive, Loucks found Lovell and Pearson in a neighbor's yard. Pearson was holding Lovell's hand. Loucks grabbed the shotgun, exited the vehicle, pointed the gun at Pearson, and told Lovell to get in the vehicle. Lovell got inside the vehicle, and Loucks drove away. Loucks decided to return to where he had left Pearson because Loucks wanted to talk with Pearson about the stolen firearms. Loucks explained that his intention was to ask Pearson to go for a "little drive." When Loucks found Pearson again, Loucks asked Pearson if Pearson wanted to go for a ride. Pearson responded that he had a gun, and Loucks said, "well, we all got guns." Pearson then got into the back of the vehicle with the defendant. Loucks did not see a firearm on Pearson at the time, but Loucks noted that it was dark inside the vehicle.

¶ 8 Loucks then drove toward Nashville, Illinois, to a friend's house. He explained that he went to his friend's property because it was remote, and there was nowhere for Lovell to go if she wandered away. He only wanted to talk with Pearson about the stolen guns and Pearson's intentions with Lovell. He noted that once they talked, he intended to leave Pearson out there, so that Pearson had to walk back to Belleville. However, he did not intend to harm Pearson. During the drive, Loucks did not speak with Pearson, and Loucks could not hear whether the others were saying anything.

¶ 9 When they arrived at the property, Loucks stopped the vehicle on the back driveway, which was off Lunte Creek Road, and exited the vehicle, so he could urinate. Loucks needed Lovell to also exit the vehicle because his wrist was broken, and he needed assistance with undoing his pants. As he started to open the rear driver's side door for Lovell, he heard the "boom" of a gun

being fired. He noted that at most, it was one minute between when he exited the vehicle, and he heard the gunshot. He did not hear anyone say anything about guns before the gunshot. When asked who shot the gun, he stated that he assumed the defendant because the defendant was the only person in the back of the vehicle besides Pearson, and Lovell was exiting the vehicle. After the gunshot, he heard either the defendant or Robinson yelling that Pearson had a gun. However, he could not say whether Pearson had a gun. Loucks noted that Robinson claimed that the shot had "just missed him," but Loucks did not understand how that was true since Robinson was also getting out of the vehicle at the time, and "the door to the back seat was open."

¶ 10 Loucks noted that after he heard the gunshot, he pulled Lovell toward him, so she would not see the body. Loucks never approached Pearson's body. Loucks did not know what the defendant was doing at this point. Loucks explained that he then panicked and told everyone that they needed to leave the area. While on the way back to Belleville, Loucks stopped at a car wash in Albers to clean the blood off the vehicle's exterior, as there was blood "coming up on the hood." The defendant cleaned the vehicle while Loucks checked on Lovell. The following day, the defendant vacuumed the vehicle's interior.

¶ 11 Loucks testified that he did not know what happened to the 12-gauge shotgun that he had brought that night. He noted that he and the defendant talked about throwing it away, and he also thought about pawning it, but he decided to keep it because it was an heirloom. He explained that it should have been inside his house, but the police did not find it during their search. The defendant stayed at Loucks's house on the night of the shooting. The last time that Loucks saw the defendant was a couple of days after the shooting.

¶ 12 On cross-examination, Loucks indicated that one of the firearms that Pearson had stolen from Loucks was a .32-caliber small handgun. Loucks admitted that he told investigators that he

believed the firearm that Pearson might have had that night was the .32-caliber handgun, but he did not see Pearson with a gun that night. Loucks explained that he assumed Pearson had that particular gun because that was the gun Pearson had stolen from him. Loucks did not hear whether the defendant asked to be taken home after Pearson got into the vehicle. Loucks did not see the gun being fired, but he assumed that it was the shotgun because it shook the vehicle. Robinson was outside the vehicle after the shooting, but Loucks did not see Robinson exit the vehicle or go near Pearson's body. Loucks indicated that at some point after the shooting, the shotgun was in his house.

¶ 13 John Burrow, a special agent with the Illinois State Police (ISP), testified that on the evening of July 19, 2023, he responded to a call about a dead body discovered on rural, private property located on Lunte Creek Road outside of Nashville. When he arrived, the scene was already secured, and he observed the body was lying face up with no signs of tampering. The person was later identified as Pearson. There was a kitchen knife discovered on the ground between Pearson's legs. Pearson was wearing a hospital wristband from an admission a few days prior to his death. Special Agent Burrow later learned that Pearson was in the hospital for a mental health crisis and that Pearson had left without receiving treatment. Other than the gunshot injury, there were no other apparent injuries on Pearson's body. Special Agent Burrow indicated that a search of the area was conducted the following morning, but there were no additional weapons found.

¶ 14 During the investigation, Special Agent Burrow interviewed the defendant, and the interview was recorded. The interview was played for the jury. In the interview, the defendant stated that his cousin told him that Pearson had stolen a firearm from Loucks. The defendant's cousin wanted the defendant's help retrieving Loucks's firearm. Thus, the defendant went with his cousin to Loucks's house and spoke with Loucks. Later that same day, the defendant observed

Lovell leave Loucks's home with Pearson while both were acting erratic. The defendant tried to get Lovell to return home, but Pearson grabbed Lovell and pulled her away. While pulling her away, Pearson indicated that he could "get rid of him tonight." The defendant then returned to Loucks's home and told Loucks that Lovell was with Pearson. In response, Loucks decided to look for Lovell and grabbed some firearms before leaving. The defendant and Robinson accompanied Loucks. When they located Lovell and Pearson, they observed that Pearson was pulling Lovell into some bushes. Loucks and Robinson both pointed firearms at Pearson, and Pearson released Lovell. The defendant could not hear exactly what Loucks was saying to Pearson, but the defendant noted that Loucks was threatening Pearson. Lovell got into the vehicle, and Loucks put his firearm in the back of the vehicle and then drove away.

¶ 15 The defendant indicated that as they were driving, Lovell told Loucks that Pearson had hit her. Loucks then drove back to Pearson and confronted Pearson. Loucks asked Pearson what Pearson wanted, and Pearson responded that he wanted compensation for what he had done for Loucks. Loucks then told Pearson to get in the vehicle, and Pearson got inside. Pearson told Loucks that he had a gun and a knife on him. Loucks responded that they all had firearms, but "it's all friends here, *** we're just going to have a talk." The defendant did not know where Loucks was driving to, but at some point, the defendant asked to be let out of the vehicle.

¶ 16 However, Loucks kept driving and pulled over approximately 20 minutes later. Pearson asked Loucks if Loucks had brought Pearson out there to kill him and stated that he was not going out without a fight. Loucks responded that he was not going to kill Pearson and that he just wanted to talk. Robinson pulled Pearson out of the vehicle while the defendant was still sitting inside. Loucks then told Robinson to get a firearm and the defendant to help Lovell out of the vehicle. Loucks got the guns from the vehicle and laid them out. After the defendant exited the car and

assisted Lovell, Loucks told the defendant to move the guns to the back of the vehicle. While carrying the guns, the defendant turned and observed Pearson pull out a small, black, "old-school" Ruger-style gun and raise it toward Loucks. The defendant yelled, "he's got a gun" and told Pearson several times to lower the firearm. However, Pearson looked at the defendant and continued to raise the gun toward Loucks. In response, the defendant shot Pearson with the shotgun that the defendant was holding. The defendant then dropped the shotgun and went over to Pearson to pray over the body. The defendant noted that Pearson also had a kitchen knife that night. The defendant saw it when they were inside the vehicle, but he did not see it again.

¶ 17 The defendant indicated that he was aiming at Pearson's shoulder. At the time he pulled the trigger, the defendant was at the back of the vehicle while Pearson was inside the passenger side rear doorway. The defendant indicated that Robinson claimed that the defendant's shot almost hit Robinson, and Robinson dropped the gun that he had. After the shooting, Loucks picked up the shotgun that the defendant had dropped and the gun that Robinson had dropped and placed them in the back of the vehicle behind the third row of seats. When they returned to Loucks's house, Loucks took the guns inside, and the defendant never saw the shotgun again. However, Pearson's gun was left on the ground near Pearson's body. The defendant noted that he did not touch Pearson after the shooting and did not touch anything around Pearson. The defendant got back inside the vehicle, but Loucks and Robinson remained outside for approximately one minute collecting various items that had been kicked out of the vehicle.

¶ 18 The defendant explained that he did not have any intention of doing anything to Pearson. When he got into the vehicle at Loucks's house, he did not have a gun, but he knew that there were guns inside the vehicle. His only reason for getting inside the vehicle was to help Loucks find

Lovell. The defendant had met Pearson only three weeks before the shooting, and he did not have any issues with Pearson.

¶ 19 Following the video, Special Agent Burrow testified that although the police searched the crime scene, Loucks's vehicle and house, the neighboring yards, and the house where the defendant was apprehended, neither the 12-gauge shotgun that the defendant used to shoot Pearson nor the pistol that the defendant alleged that Pearson had pointed at Loucks were recovered. Special Agent Burrow noted that, in the defendant's interview, the defendant indicated that he did not remove a gun from the scene. Special Agent Burrow also noted that an old-style black powder handgun and an old 16-gauge shotgun were found at Loucks's residence. No spent shell casings, spent cartridges, or spent ammunition were found at the scene.

¶ 20 A surveillance video from the car wash was played for the jury. The video showed, on the night of the shooting, the defendant getting out of a vehicle and walking over to a trash can.

¶ 21 Kamal Sabharwal, a forensic pathologist, conducted Pearson's forensic autopsy and determined that the cause of death was a gunshot wound to the head. Dr. Sabharwal noted that there was a "distinct hole in the back of [Pearson's] head in the midline." Dr. Sabharwal indicated that the appearance of the entrance wound was characteristic of an entrance gunshot wound "where the gun [was] held in contact to the head." Dr. Sabharwal explained that if the barrel of the gun was held a foot away from the head, there would not be the type of skin tearing that was present on the back of Pearson's head. Dr. Sabharwal concluded, based on his examination, that the gunshot entered the back of the head and exited through the front top of the scalp. Dr. Sabharwal noted that he could not tell the caliber or size of the bullet from looking at the injury. Dr. Sabharwal also noted that because the pressure from the gun was so great, the entire top of Pearson's head was opened, and there was no distinct exit wound. Consequently, Dr. Sabharwal could not

determine at what angle the bullet traveled. Dr. Sabharwal also could not determine Pearson's position when shot. Dr. Sabharwal indicated that Pearson tested positive for alcohol and methamphetamine.

¶ 22 Jacob Dorris, an ISP crime scene investigator, testified that he processed the scene of the shooting and noted there were no firearms, spent shell casings, or ammunition recovered. He also processed Loucks's vehicle, which was a white Ford Explorer, in connection with the shooting. He tested the vehicle's interior for the presence of human blood and got faint, positive reactions on the passenger side of the vehicle, mainly on the doors. He explained that a positive reaction indicated that the substance was presumed to be blood but would need additional testing for verification. Further, at the car wash, he collected various items from the trash can, including a red T-shirt with unknown stains and stained paper towels.

¶ 23 John Baudino, a task force officer with the United States Marshals Service, testified that on July 27, 2023, he was dispatched to a Belleville residence to assist with the defendant's arrest. A female occupant allowed the officers to enter the residence, and the defendant was discovered hiding in a closet. The defendant refused to exit the closet, but after Sergeant Baudino threatened to use tear gas, the defendant crawled out of the closet and was ultimately arrested.

¶ 24 The trial court then read the parties' six stipulations to the jury. In particular, one of the stipulations stated that that on July 19, 2023, at approximately 8:30 p.m., Gary Weihe discovered a deceased black male lying on his field road; he did not get out of his truck, but he backed up and called police; and he did not see anyone else approach the body until the police arrived. Another stipulation stated that Charles Carroll, a sergeant with the Washington County Sheriff's Office, was dispatched to the scene at approximately 8:25 p.m. on July 19, and while on scene, he did not

see anyone remove anything from the body or from around the body. After the stipulations were read, the State rested its case. Defense then also rested.

¶ 25 The jury was instructed on intentional and knowing first degree murder, felony murder based on kidnapping, second degree murder, and the affirmative defense of justified use of force. Following jury deliberations, the jury found the defendant guilty of second degree murder.

¶ 26 On August 29, 2024, the trial court held the sentencing hearing, at which the trial court found that the defendant was extended-term eligible based on the defendant's 2005 federal felony conviction where the defendant was discharged from custody in 2016. Defense counsel conceded that the defendant was extended-term eligible but argued that it was not appropriate to sentence the defendant to an extended-term sentence. The parties then presented their arguments on whether the defendant should be sentenced to a term of probation, instead of imprisonment, and their arguments in aggravation and mitigation.

¶ 27 The State argued that a sentence of imprisonment was necessary for the protection of the public and that a sentence of probation or conditional discharge would deprecate the seriousness of the defendant's conduct and be inconsistent with the ends of justice. The State acknowledged that in finding the defendant guilty of second degree murder, the jury found the presence of some mitigating factors. However, the State argued that the circumstances of the offense, which included the defendant's admission of using a firearm and the defendant's criminal history, supported a sentence of imprisonment. Specifically, regarding the defendant's criminal history, the State noted that the defendant had 4 felonies, including the present felony; 9 misdemeanors; 16 petty offenses; and 1 federal offense. The State also noted that for the defendant's first felony offense, the defendant was initially sentenced to probation. The State indicated that the longest span where the defendant had not committed any offenses was when he was in federal custody. The State noted

that the defendant's federal conviction involved crack cocaine and the possession of firearms; his latest IDOC sentence was a three-year sentence for delivery/possession of methamphetamine in 2019; and he was on conditional discharge for possession of a controlled substance conviction when the present offense was committed.

¶ 28 In aggravation, the State argued that the defendant's conduct caused or threatened serious harm, as the individuals in the vehicle were driving around with firearms; the defendant had a criminal history, which included multiple felony offenses; the sentence was necessary to deter others from making the "voluntary decision" to pull the trigger; and the defendant committed the felony while he was on probation and conditional discharge for possession of a controlled substance. The State recognized that the defendant was convicted of second degree murder but argued that, due to the defendant's criminal history, which included offenses with drugs and firearms, the maximum sentence of 30 years was appropriate. In addition, the State offered a victim impact statement from Pearson's mother.

¶ 29 In response, defense counsel noted that the jury, in finding the defendant guilty of second degree murder, found that there were mitigating circumstances. Defense counsel acknowledged that the defendant was eligible for extended-term sentencing but argued that, based on the trial evidence and the trier of fact's finding of the existence of mitigating factors, it was not appropriate to impose an extended-term sentence. Defense counsel argued that the defendant was only eligible for extended-term sentencing because his probation resulting from his 2005 federal conviction was revoked, and he was thereafter resentenced. Counsel noted that the defendant's parole was revoked because the defendant committed the offense of driving while his license was revoked, he failed drug tests, and he failed to complete treatment. Thus, counsel argued that if the trial court imposed

an extended-term sentence, that decision was not based on the defendant committing a serious substantive offense.

¶ 30 In mitigation, defense counsel argued that the defendant did not contemplate that his criminal conduct would cause or threaten serious physical harm to another, as, at trial, there was no evidence presented as to planning or premeditation; and he acted under strong provocation. Counsel acknowledged that the defendant had a criminal history but argued that out of the 30 offenses that resulted in a disposition, 16 were either minor traffic offenses or petty offenses, 9 were misdemeanor offenses, and 4 were felony offenses involving drugs. Counsel admitted that the defendant's federal conviction was firearm related but noted that it was for possession, not the use of, or the discharge of, a firearm. Thus, although counsel admitted that the defendant had a lengthy criminal history, counsel argued that the defendant did not have a violent criminal history. Defense counsel also argued that the defendant's criminal conduct was the result of circumstances unlikely to reoccur, as the defendant did not have a history of violence or of using firearms against another. Counsel further argued that the defendant cooperated with law enforcement, provided a statement, admitted to shooting Pearson, and took responsibility for his actions.

¶ 31 Counsel argued that an extended-term sentence or a lengthy sentence would be inconsistent with the jury's finding of mitigating factors. Counsel argued that, because of the circumstances of the case, deterrence should not carry much weight. Counsel noted that, due to the defendant's criminal history and the fact that the defendant was on conditional discharge for another felony at the time of the present offense, counsel was not seeking probation or conditional discharge. However, counsel argued that a sentence close to the minimum sentence would be appropriate. The defendant then made a statement in allocution, apologizing to Pearson's family and friends,

expressing remorse for Pearson's death, and expressing his wish that Pearson's family would find peace.

¶ 32 Following arguments, the trial court sentenced the defendant to the maximum extended-term sentence of 30 years. In making this decision, the trial court noted that it considered the presentence investigation report, arguments presented by counsel, the exhibits presented at the sentencing hearing, the defendant's statement in allocution, and the evidence offered at trial. The trial court noted that the defendant had a fairly lengthy criminal history with some significant charges, most notably a federal charge involving a firearm. The trial court also noted that, in looking at the defendant's criminal history, there were not many examples of the defendant being compliant. Specifically, the trial court indicated that in the majority of the cases, the defendant had failed to appear in court and that, in the few instances that the defendant was on probation or conditional discharge, a petition to revoke was filed. Thus, based on the defendant's history, the trial court found that the defendant would be unlikely to comply if sentenced to probation. In addition, considering the nature of the current offense combined with the nature of the federal felony conviction involving a firearm, the trial court found that a sentence of imprisonment was necessary for the protection of the public.

¶ 33 The trial court then addressed the relevant aggravating and mitigating factors. In aggravation, the trial court found that the defendant's conduct threatened serious harm, noting that having a group of individuals, who had disagreements with each other, in a vehicle together with firearms was a "recipe for disaster." The trial court again noted that the defendant had a lengthy criminal history. The trial court indicated that the defendant had a lot of traffic offenses "and other stuff" but noted that there were also some serious charges. The trial court found that deterrence was a "big factor" in this case because it was necessary to deter a "group of people with a beef

against somebody getting that person in the car with weapons." The trial court noted that the "community at large [had] to learn that if you have a problem with somebody, the way to address it [was] not with a gun in your hand. It [was] through words or other remedies, not with weapons." In addition, the trial court noted that the defendant was convicted of the present offense while he was on conditional discharge in a previous case.

¶ 34 Regarding defense counsel's mitigation arguments, the trial court disagreed with defense counsel that the defendant did not contemplate that his conduct would cause or threaten serious physical harm to another. In making that finding, the trial court noted that the evidence showed that the defendant took a firearm and placed the barrel either against the back of, or right next to, Pearson's head at the time the trigger was pulled. The trial court indicated that there was no way that anyone would think that placing a firearm point blank to another's head and pulling the trigger would not cause serious harm. Also, the trial court did not place much weight on defense counsel's argument that the defendant had acted under strong provocation. Although the trial court acknowledged the defendant's statement that the defendant thought Pearson had a weapon, the trial court noted that there was no firearm found at the scene or elsewhere that indicated that Pearson was armed.

¶ 35 The trial court then addressed defense counsel's argument that the defendant had no violent history. The trial court disagreed with that assessment, noting that in 2019, the defendant had two battery charges. The trial court explained that it would consider batteries as violent, as they usually involved a fight. The trial court acknowledged that the battery charges were not aggravated battery charges but noted that, in most instances, that distinction was based on the location where the battery was committed. However, the trial court recognized that it did not know the circumstances of the charges. The trial court noted that there might be additional batteries in the defendant's

criminal history prior to 2019. Thus, the trial court noted that it disagreed with defense counsel's assessment that the defendant did not have a violent history.

¶ 36 As for defense counsel's argument that the defendant cooperated with law enforcement, the trial court indicated that after the shooting, the defendant tried to erase the evidence by assisting Loucks with cleaning the vehicle. In addition, the trial court noted that throughout the next several days, the defendant lived his normal life, except for evading law enforcement, and he was ultimately apprehended while hiding in a closet. The trial court acknowledged that the defendant talked to police but noted that this happened only after he was caught; he did not voluntarily go to police. Consequently, the trial court found that the factors in mitigation either did not apply or did not carry enough weight for the court to consider when determining the defendant's sentence.

¶ 37 On September 17, 2024, the defendant filed a motion to reconsider his sentence, arguing that his sentence was excessive based on the evidence at trial and the mitigating evidence and arguments presented by defense counsel at sentencing. The defendant also argued that the trial court failed to properly consider the mitigating factors present in the case. After the January 28, 2025, hearing on the defendant's motion, the trial court denied the motion. The defendant appeals.

¶ 38 II. ANALYSIS

¶ 39 On appeal, the defendant contends that (1) the State failed to prove, beyond a reasonable doubt, that he did not reasonably believe that he needed to act in defense of others when he shot Pearson, and alternatively, (2) his 30-year sentence was excessive.

¶ 40 A. Defense of Others

¶ 41 The defendant first contends that his conviction should be reversed because the State failed to disprove that he acted in defense of others beyond a reasonable doubt. Specifically, the defendant contends that his police interview statement demonstrated that Pearson was the initial

aggressor and that the defendant subjectively, and reasonably, believed that there was danger requiring the use of force when Pearson refused to lower the gun aimed at Loucks despite the defendant's warnings.

¶ 42 Due process requires proof beyond a reasonable doubt to convict a criminal defendant. *People v. Grayer*, 2023 IL 128871, ¶ 27. When presented with a challenge to the sufficiency of the evidence, it is not the reviewing court's role to retry defendant. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Rather, the reviewing court must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Id.* All reasonable inferences from the evidence must be drawn in favor of the prosecution. *People v. Hardman*, 2017 IL 121453, ¶ 37. The trier of fact is responsible for assessing the credibility of the witnesses, determining the appropriate weight of the testimony, and resolving conflicts or inconsistencies in the evidence. *People v. Collins*, 106 Ill. 2d 237, 261-62 (1985). A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to defendant's guilt. *Id.* at 261.

¶ 43 In this case, even though the defendant raised the affirmative defense of others, the jury found him guilty of second degree murder. To raise this affirmative defense, defendant must present some evidence that (1) unlawful force was threatened against defendant or others, (2) defendant was not the aggressor, (3) the danger of harm was imminent, (4) the use of force was necessary, (5) defendant subjectively believed a danger existed requiring the use of force applied, and (6) defendant's belief was objectively reasonable. *People v. Taylor*, 2016 IL App (1st) 141251, ¶ 11; see also 720 ILCS 5/7-1(a) (West 2022) ("A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend

himself or another against such other's imminent use of unlawful force."). Once the affirmative defense is raised, and defendant presents some evidence as to each of these elements, the burden shifts to the State to prove that defendant did not act in defense of others. *People v. Myles*, 257 Ill. App. 3d 872, 882 (1994). "The State meets this burden by affirmatively disproving at least one of the above elements beyond a reasonable doubt." *Id.* Thus, the State must prove, beyond a reasonable doubt, that the murder was not carried out in defense of another person, and that defendant's use of force was not legally justified. *People v. Jeffries*, 164 Ill. 2d 104, 127 (1995).

¶ 44 Second degree murder is a lesser mitigated offense of first degree murder. *People v. Izquierdo-Flores*, 332 Ill. App. 3d 632, 637 (2002). Second degree murder is distinguishable from self-defense and defense of others in terms of the nature of defendant's belief at the time of the killing. *People v. Rodriguez*, 336 Ill. App. 3d 1, 17 (2002). If defendant's belief as to the use of force was reasonable, self defense or defense of others may apply. *Id.* However, if defendant's belief was unreasonable, a second degree murder conviction may be appropriate. *Id.*

¶ 45 Ultimately, the question of whether a defendant acted in self-defense or defense of others is a question for the trier of fact. *People v. Garcia*, 407 Ill. App. 3d 195, 203 (2011); *People v. Goliday*, 222 Ill. App. 3d 815, 822 (1991). In making this determination, the trier of fact is not obligated to accept a defendant's testimony regarding an incident and the need for self-defense or defense of others. *People v. Murillo*, 225 Ill. App. 3d 286, 292 (1992). Instead, the trier of fact must consider the circumstances around the killing, the probability or improbability of defendant's testimony, as well as the testimony of other witnesses. *In re Jessica M.*, 399 Ill. App. 3d 730, 737 (2010); *Rodriguez*, 336 Ill. App. 3d at 15.

¶ 46 However, in this case, the defendant contends that since his statement that he only shot Pearson after Pearson aimed a firearm at Loucks was neither improbable nor contradicted, the jury

was bound to accept his account of the shooting. In support, the defendant cites *People v. Jordan*, 4 Ill. 2d 155, 163 (1954), a case in which the supreme court reversed defendant's involuntary manslaughter conviction after concluding that the jury had improperly rejected defendant's self-defense claim. In that case, defendant admitted to punching the victim, which caused the victim to fall to the ground and hit his head on concrete. *Id.* at 157. However, in the statement provided to investigating officers, defendant explained that he and the victim exchanged words, the victim ran at him while swinging an object, and defendant punched the victim to protect himself. *Id.* There were no eyewitnesses to the altercation, and the only evidence as to what occurred was defendant's signed, written statement. *Id.* Thus, there was no conflict in the evidence as to which man was the initial aggressor or whether defendant struck the blow in self-defense. *Id.* at 162. Because there was no evidence in the record that refuted defendant's self-defense claim and because defendant's account of the altercation was not improbable or unreasonable, the supreme court concluded that the jury erred in rejecting defendant's affirmative defense. *Id.* 162-63.

¶ 47 Here, the jury rejected the defendant's claim of the affirmative defense of others and found the defendant guilty of second degree murder. In making this finding, the jury found that the State disproved at least one of the defense elements beyond a reasonable doubt. The jury, in reaching this determination, considered the defendant's account of the shooting. The jury, as the trier of fact, was not required to accept as true the defendant's statement regarding the incident and the need for defense of others. Although the supreme court in *Jordan* found that defendant's version of the encounter could not be disregarded by the jury, the court also listed certain limitations to this rule. *Id*. at 163. Specifically, our supreme court found that defendant's story could be rejected if it was improbable or contradicted by other facts and circumstances. *Id.* From our review of the defendant's testimony, and the other testimony offered at trial, we find that the State's evidence

contradicted the defendant's statement on material points and thus posed an issue for resolution by the jury.

¶ 48 For example, although the defendant claimed that Pearson was aiming a gun at Loucks at the time the defendant shot Pearson, there was no gun found at the scene. The defendant also claimed that when he saw Pearson aiming a gun at Loucks, he yelled, "he's got a gun" and told Pearson several times to lower the firearm, but Loucks testified that he did not hear anything about a gun before he heard the gunshot. In addition, Loucks testified he was assisting Lovell from the vehicle when he heard the gunshot. However, the defendant indicated that before the shooting, he assisted Lovell from the vehicle. Further, while Loucks claimed that there was approximately one minute between him exiting the vehicle and him hearing the gunshot, the defendant's version of the encounter immediately before the shooting likely would have taken more than one minute. In particular, the defendant's account of the events immediately before the shooting was that once the vehicle stopped, Robinson pulled Pearson out of the vehicle, the defendant exited the vehicle and assisted Lovell outside, and Loucks told the defendant to move the guns to the back of the vehicle. The defendant then gathered the guns and was carrying them to the back of the vehicle when he observed Pearson aiming a gun at Loucks.

¶ 49 Lastly, and most importantly, although the defendant claimed that he aimed the gun at Pearson's shoulder while the defendant was standing at the back of the vehicle and Pearson was inside the rear passenger door, and that Pearson was looking at him at the time, the forensic evidence indicated that the bullet entered the back of Pearson's skull and that the gun was held in contact to the head. Thus, while we agree with the defendant that there is some evidence suggesting that he acted in defense of Loucks, there is also evidence showing that the defendant's account was not completely credible. The jury rejected the defendant's statement as to the shooting, which

was the jury's prerogative in its role as trier of fact. We will not substitute our judgment for that of the jury on questions of credibility. As already noted, it is the province of the jury to determine the credibility of the witnesses and the weight to be given their testimony, and a jury's verdict will not be disturbed unless contrary to the evidence or so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of the defendant's guilt. See *Collins*, 106 Ill. 2d at 261-62. After viewing the evidence in the light most favorable to the prosecution, we conclude that there was sufficient evidence to find, beyond a reasonable doubt, that the defendant was not acting in defense of others.

¶ 50 B. Sentencing Errors

¶ 51 The defendant next contends that his 30-year sentence was excessive. Specifically, he contends that the trial court abused its discretion in imposing the maximum extended-term sentence where the jury, in finding him guilty of second degree murder, found that a mitigating factor existed to justify the lesser conviction; the sentence was disproportionate to the seriousness of the offense considering that he did not create the circumstances that led to the outcome; the trial court ignored his prior lack of violent convictions and the sincere regret he expressed in allocution; and the trial court, in making its sentencing decision, improperly considered his two dismissed battery charges and attributed a violent past to him that was not supported by the record.

¶ 52 The State contends that the defendant has forfeited his claims because he failed to include them in his written postsentencing motion. Although the State acknowledges that the defendant filed a written postsentencing motion generally arguing that his sentence was excessive, the State argues that the defendant failed to set forth his specific claims for challenging his sentence in the motion. In response, the defendant contends that his claims are not forfeited where, at sentencing, his counsel argued extensively for a sentence near the minimum based on the mitigating factors

and then subsequently filed a postsentencing motion arguing that the imposed sentence was excessive based on the evidence and arguments presented in mitigation and where the trial court did not properly consider the relevant mitigating factors. Alternatively, the defendant argues that his claims are reviewable under plain-error review.

¶ 53 In order to preserve a claim of sentencing error, both a contemporaneous objection and a written postsentencing motion raising the issue are required. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Here, the defendant's postsentencing motion only raised generic excessive sentence claims. Thus, we agree with the State that the defendant's motion did not apprise the trial court of the specific claims of error that he raises here on appeal. However, as noted above, the defendant argues that his postsentencing motion combined with his arguments at sentencing were sufficient to inform the trial court of his claims of error as to his sentence. In addition, during oral argument, the defendant's appellate counsel acknowledged that the argument that the trial court erred in considering the defendant's two dismissed battery charges, as evidence that he had a violent history may not have been properly preserved in the trial court. Nevertheless, he contends that we can review this claim under the first and second prongs of plain-error review.

¶ 54 The plain-error doctrine is a narrow and limited exception to forfeiture. *People v. Stephens*, 2017 IL App (1st) 151631, ¶ 43. Sentencing errors raised for the first time on appeal are reviewable as plain error if (1) the evidence was closely balanced or (2) the error was so egregious as to deprive the defendant of a fair sentencing hearing. *Hillier*, 237 Ill. 2d at 545. The first step under either prong of the plain-error analysis is to determine whether a clear or obvious error occurred. *People v. Sargent*, 239 Ill. 2d 166, 189 (2010). Accordingly, we address below whether there was clear or obvious error.

¶ 55 A trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). This court reviews the trial court's sentencing decisions for an abuse of discretion. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). When a sentence falls within statutory limits, like in this case, the sentence will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. *People v. Fern*, 189 Ill. 2d 48, 54 (1999).

¶ 56 The trial court's judgment regarding sentencing is afforded great deference because the court, having observed defendant and the proceedings, has the opportunity to weigh such factors as defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *Stacey*, 193 Ill. 2d at 209. Consequently, the reviewing court will not substitute its judgment for that of the sentencing court merely because it would have weighed these factors differently. *Id.*

¶ 57 The Illinois Constitution mandates that criminal sentences reflect the seriousness of the offense and the objective of restoring the offender to useful citizenship. Ill. Const. 1970, art. I, § 11; *People v. Clemons*, 2012 IL 107821, ¶ 29. The Unified Code of Corrections sets out certain statutory factors in aggravation and mitigation that a trial court must consider when imposing a sentence of imprisonment. 730 ILCS 5/5-5-3.1, 5-5-3.2 (West 2022). In fashioning the appropriate sentence, the court must carefully consider all the factors in aggravation and mitigation, and other factors, such as defendant's age, demeanor, habits, credibility, criminal history, social environment, and education as well as the nature and circumstances of the crime and of defendant's conduct in the commission of the crime. *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). When such factors have been presented for the trial court's consideration, it is presumed, absent

some contrary indication, that the factors have been considered. *People v. Flores*, 404 Ill. App. 3d 155, 158 (2010). A trial court has wide latitude in sentencing a defendant, as long as it neither ignores relevant mitigating factors nor considers improper factors in aggravation. *Id.* at 157.

¶ 58 Here, we find that the trial court did not abuse its discretion in sentencing the defendant to an extended term of 30 years. The defendant was convicted of second degree murder, a Class 1 felony with a normal sentencing range of not less than 4 and not more than 20 years. 720 ILCS 5/9-2 (West 2022); 730 ILCS 5/5-4.5-30(a) (West 2022). However, based on the defendant's criminal history, he was eligible for an extended-term sentence with a sentencing range of not less than 15 and not more than 30 years. *Id.* § 5-8-2(a); *Id.* § 5-4.5-30(a). Therefore, although defendant received the maximum 30-year sentence, it is presumed to be proper because it falls within the statutory guidelines. See *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 12 (a sentence that falls within the statutory range is presumed to be proper).

¶ 59 Here, the defendant argues his 30-year sentence is excessive in light of certain mitigating factors, specifically his lack of violent convictions, his sincere regret he expressed in allocution, his demonstrated clear rehabilitative potential, the jury's second degree murder finding, and the fact that the sentence had little deterrent value where the evidence showed that he had mere seconds to respond to Pearson aiming a firearm at Loucks. The defendant also contends that the trial court erred in considering his dismissed battery charges when characterizing him as a violent person where the trial court did not know the circumstances of the dismissed charges and showed a mistaken belief that there were other violent charges in his criminal history.

¶ 60 After carefully reviewing the record, we find that the defendant has failed to overcome the presumption that the trial court properly considered the sentencing factors. As previously mentioned, it is presumed that the trial court considered all relevant sentencing factors, absent

some contrary indication, which the defendant here fails to provide. See *Flores*, 404 Ill. App. 3d at 158. The record here shows that, in sentencing the defendant, the trial court expressly considered the presentence investigation report, the arguments in aggravation as well as mitigation, and the defendant's statement in allocution. In aggravation, the trial court noted that the defendant had a fairly lengthy criminal history that included significant charges, one of which was a federal charge involving a firearm; that the defendant was convicted of the present offense while on conditional discharge; and that the defendant's conduct threatened serious harm. The trial court found that deterrence was a significant factor, as it was necessary to deter those with a "beef" from getting into a vehicle together with firearms and from resolving their issues with firearms.

¶ 61 In addition, the trial court considered, and disregarded, the defendant's mitigating argument that the defendant did not contemplate that his conduct would cause or threaten serious physical harm to another, as the evidence showed that at the time of the shooting, the firearm was placed at the back of, or right next to, Pearson's head. The trial court also disagreed with defense counsel that the defendant had acted under strong provocation, noting that no firearm was found at the scene or elsewhere to support the defendant's assertion that Pearson was armed. Moreover, the trial court noted that, after the shooting, the defendant tried to erase any evidence of the shooting and evaded police for several days until he was ultimately apprehended hiding in a closet.

¶ 62 Based on the above, we find that the trial court appropriately weighed the mitigating factors against the factors in aggravation and found that the mitigating factors either did not apply or did not carry sufficient weight for consideration when determining the defendant's sentence. The existence of mitigating factors does not mandate imposition of the minimum sentence or preclude imposition of the maximum sentence. *Id*. The defendant already received a mitigating sentence in light of his second degree murder conviction. The trial court obviously felt no need to reduce the

punishment further based on the defendant's claims that his actions were the result of strong provocation or that substantial grounds existed to excuse or justify his conduct. The record does not reflect that the trial court expressly refused to consider these factors, only that the factors were given little or no weight. We are in no position, as the reviewing court, to reweigh the mitigating factors.

¶ 63 Further, as for the defendant's argument that the trial court improperly considered his dismissed charges, as well as the fact that there might be more violent offenses in the defendant's history, we find that the trial court's comments, examined as a whole and in the context of the entire record, were merely responsive to defense counsel's mitigating argument that the defendant had no history of violent crimes. See *People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 22 ("There is a strong presumption that the trial court based its sentencing determination on proper legal reasoning, and a court of review should consider the record as a whole, rather than focusing on a few words or statements by the trial court."). There is no indication in the record here that the trial court placed significant weight on these dismissed charges when determining the appropriate sentence. See *People v. Reed*, 376 Ill. App. 3d 121, 128 (2007) (to obtain a remand for resentencing, defendant must show that the trial court relied on the improper fact when imposing sentence).

¶ 64 The defendant's arguments here on appeal essentially amount to a request that we reweigh the mitigating factors. However, we will not substitute our judgment for the trial court's judgment. In light of the facts of this case, and the trial court's proper consideration of the mitigating and aggravating factors, we do not find that the defendant's sentence is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. Accordingly, we affirm the defendant's 30-year sentence for second degree murder.

¶ 65 III. CONCLUSION

¶ 66 For the above reasons, we affirm the trial court's judgment.

¶ 67 Affirmed.