2026 IL App (1st) 241258-U

THIRD DIVISION
August 31, 2026

No. 1-24-1258

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 04 CR 29140
	)	
BRYANT ERVES,	)	Honorable
	)	William G. Lacy and
Defendant-Appellant.	)	William G. Gamboney,
	)	Judges Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Martin and Justice Rochford concurred in the judgment.

ORDER

¶ 1 *Held*: Affirming the judgment of the circuit court of Cook County denying the defendant's postconviction petition following a third-stage evidentiary hearing; denying the defendant's request to reduce his sentence where the circuit court did not abuse its discretion in imposing a 30-year sentence.

¶ 2 Following a bench trial, defendant Bryant Erves was convicted of first-degree murder for the fatal shooting of 15-year-old Troy Wilson in Chicago. Defendant, who was 17 years old at the time of the offense, was initially sentenced to a term of imprisonment of 55 years, *i.e.*, 30 years plus a 25-year sentencing enhancement for his personal discharge of a firearm. After

various proceedings, a postconviction petition filed by defendant was denied following a third-stage evidentiary hearing, and defendant was resentenced to a prison term of 30 years. On appeal, defendant contends that he made a substantial showing that he is entitled to a new trial based on his claims of actual innocence and ineffective assistance of trial counsel. He also maintains that his 30-year sentence is excessive. For the reasons discussed below, we affirm.

¶ 3 BACKGROUND

¶ 4 Defendant was indicted on multiple counts of first-degree murder, aggravated unlawful use of a weapon, and unlawful use of a weapon for the shooting death of Wilson. Over defendant's objection, the trial court granted the State's motion to admit gang-related evidence.

¶ 5 *Trial*

¶ 6 The matter proceeded to a bench trial which commenced in March 2006, where defendant was represented by private counsel. The testimony and other evidence presented at trial included the following.

¶ 7 Michelle Davis

¶ 8 Michelle Davis (Davis) testified that her son, Troy Wilson (Wilson), left their residence at 8 p.m. on August 7, 2004.[1] Wilson told Davis that he was going to a party. Approximately two hours later, Davis's daughter knocked on the door and informed her that Wilson had been shot. Davis ran to the intersection of Washington Boulevard and Oakley Boulevard, where her son was lying on the ground. Wilson was transported by ambulance to the hospital, where he passed away. When asked during cross-examination whether she recognized anyone at the scene, Davis testified that she was "in a state of shock" and was focused on her son.

[1] Although the ASA questioned Davis regarding the events of "August 8, 2004," the record is clear that that shooting occurred on August 7, 2004.

¶ 9 Clarence Lang

¶ 10 Clarence Lang (Lang) testified that he was 18 years old and was in the custody of the Cook County Sheriff pending trial on two felony matters, *i.e.*, a "gun case" and a case involving possession of a controlled substance with intent to deliver. Defendant—known as "B-Love"—was Lang's neighbor. According to Lang, both he and defendant were members of the Traveling Vice Lords (TVL) gang. Another TVL member who was known as "Big-B," Byron Logan (Logan), had passed away by the time of trial. Lang also knew Wilson from grammar school.

¶ 11 Lang testified that he engaged in a 20-minute fight with members of a rival gang, the Black Disciples, in a public park near Adams Street and Hoyne Avenue at 8 or 9 p.m. on August 7, 2004. Certain of Lang's family members and friends were present for the fight, including defendant. After the fight concluded, Lang drove with his aunt to her house in the 2200 block of West Washington. As Lang exited from the vehicle, a white Ford Tempo pulled up; Logan was driving, and defendant sat in the front passenger seat.

¶ 12 Lang entered the back seat of the vehicle and discussed the fight with Logan and defendant. As Logan drove the vehicle toward Oakley, defendant stated he was "tired of these n***" and he was "going to kill one of theirs." At a second public park near Oakley and Washington, Lang observed a group of approximately 15 people. Lang testified that defendant fired a shotgun at the group through the open window. Logan continued driving, and defendant stated, "I think I got one of them n***." According to Lang, defendant had shown him the shotgun earlier in the week. Defendant indicated that he received the shotgun from his cousin's boyfriend, Carnell Jackson (Jackson), who was known as "Knuckles."

¶ 13 Lang first spoke to the police in March 2005; he testified that he did not contact the police earlier since he was "scared" that "something was going to happen" to him. During an

interview with an assistant State's attorney (ASA) on March 11, 2005, Lang signed a photograph of defendant and identified him as the shooter. Lang also identified Logan as the driver of the vehicle. An ASA questioned Lang at trial regarding photographs of the crime scene.

¶ 14 During cross-examination, Lang testified that he stayed in Minnesota for two months after the shooting, as he knew the police were looking for him. Lang confirmed that he was arrested in Minnesota, and he testified that he returned to Chicago voluntarily after his release from custody. When questioned about the fight which preceded the shooting, Lang testified he was upset when rival gang members "started talking stuff" to his mother, who was attempting to stop the fight. Lang was also "mad" that he lost his shoes and shirt during the fight.

¶ 15 Brenda Chandler

¶ 16 Brenda Chandler (Chandler) testified that she knew defendant for approximately one year and had met him through her friend, Michelle Brooks. Chandler knew Byron and Lang for her entire life; she testified that Lang's nickname was "Ooka."

¶ 17 Chandler testified that she stood on the corner of Washington and Oakley with her cousins, friends, and neighbors—including her "godbrother" Wilson—at approximately 10:30 p.m. on August 7, 2004. According to Chandler, a small white vehicle emerged from an alley. Chandler testified that Logan drove the vehicle and Lang sat in the backseat. Defendant, who sat in the front passenger seat with the window rolled down, yelled to "[g]et out the way." The vehicle stopped as the group dispersed, and defendant fired a weapon out of the window; the vehicle then sped away. Chandler ran to Wilson, who was shot. A few days later, Chandler identified photographs of defendant, Logan, and Lang during an interview with the police.

¶ 18 During cross-examination, Chandler was questioned regarding her earlier statements to an ASA and a police detective that she knew defendant through Lang and not Michelle Brooks.

Chandler testified that she was closer with Lang and Logan (before his passing) than defendant. She also acknowledged that she informed police officers who arrived at the scene after the shooting that the offender was an African American male who she did not know. During redirect examination, Chandler testified that she initially did not tell the police officers the identity of defendant and the other individuals in the vehicle, as she feared for her safety.

¶ 19 Latrice Smith

¶ 20 Latrice Smith (Smith) testified that she resided in a neighborhood which was frequented by TVL members, and she had dated Lang for approximately two years. On the evening of August 7, 2004, she was present in the public park during the fight, which included Lang, Logan, and defendant, who were all TVL gang members. After the fight, Lang, Logan, and defendant entered a white four-door vehicle, and Lang yelled out, "We be back."

¶ 21 Smith and her friends then walked to a store and to a second public park. As she stood on a corner near the park, she observed the same white car speeding out of an alley. Smith testified that Logan drove the vehicle, defendant sat in the front passenger seat, and Lang sat in the backseat. According to Smith, defendant fired a weapon which looked like a "long rifle" through the front passenger window. When Smith spoke with police officers a few days after the shooting, she identified and signed photographs of Lang, Logan, and defendant.

¶ 22 During cross-examination, defense counsel questioned Smith's ability to view the shooting given her vantage point, *i.e.*, she stood on the corner diagonally opposite from the park. Smith also confirmed that she did not initially inform police officers of the identity of the vehicle occupants during the two days after the shooting, as she was concerned regarding her safety. Smith further admitted that she falsely told an ASA that defendant, not Lang, made a threatening comment while leaving the first park.

¶ 23 Kemecha Ford

¶ 24 Chandler's cousin Kemecha Ford (Ford) testified that she was standing across the street from Wilson when he was shot on August 7, 2004. She testified that a white vehicle sped out of an alley and stopped in front of Wilson. Ford observed two unfamiliar individuals in the vehicle: the driver and a front seat passenger, who fired a weapon.

¶ 25 Larry Cartledge

¶ 26 Larry Cartledge testified that he allowed defendant to use his white four-door Ford Tempo on June 19, 2004, and had not seen the vehicle since that date.

¶ 27 Detective Chris Matias

¶ 28 Detective Chris Matias (Detective Matias) from the Chicago Police Department testified that he was assigned to investigate Wilson's shooting on August 7, 2004. Based on the initial police investigation, three individuals—known as B-Love, Big-B, and Ooka—were identified as persons of interest. Detective Matias subsequently learned their actual names: Bryant Erves, Byron Logan, and Clarence Lang. Detective Matias testified that he conducted separate photo arrays with Smith and Chandler, who each identified defendant as the shooter, Logan as the driver, and Lang as the backseat occupant of the vehicle.

¶ 29 On September 4, 2004, Detective Matias learned that Lang was in St. Paul, Minnesota. Detective Matias and his partner coordinated with the St. Paul Police Department to arrest Lang, who jumped through a window in his attempt to flee from the authorities. Detective Matias testified that he continued to search for defendant, and an arrest warrant for defendant was issued in late September 2004. According to Detective Matias, defendant turned himself into the police with an attorney on November 13, 2004. A few weeks later, Detective Matias learned that Logan had passed away.

¶ 30 During cross examination, Detective Matias was questioned regarding his initial report of his conversation with Lang on March 10, 2005. The report did not include any indication by Lang that defendant had been involved in the fight at the first park or had fired a weapon by the second park. In a supplementary report created on the following day, Detective Matias wrote that Lang informed him that defendant had stated shortly before the shooting "that he was tired of the [Black Disciples] bothering him and that he was going to kill one of those mother [f***]."

¶ 31 Defense

¶ 32 After the State rested, the defense wished to call Larry Chatman (Chatman)[2] to testify; the State objected. Defense counsel made a proffer as to Chatman's potential testimony. According to defense counsel, Chatman would testify regarding his conversation with Lang on March 7, 2006, when Chatman and Lang were both waiting in the "bullpen" of a courtroom for their respective cases to be called. Lang allegedly admitted to Chatman that Lang received the shotgun from Logan, and "he"[3] fired the weapon at the crowd. Defense counsel also proffered that Chatman would testify that defendant was not a member of the TVL gang.

¶ 33 Chatman's defense counsel in a separate criminal matter appeared in defendant's case and argued that the proposed testimony regarding his client's involvement or leadership role in a gang could negatively affect Chatman's own case. Chatman's counsel also expressed concern that defendant's counsel had initially interviewed Chatman without any notice to his attorney. Chatman, who was placed under oath, invoked the fifth amendment right to remain silent in defendant's case, and the trial court allowed him to assert the privilege.

¶ 34 The defense next called Detective Matias, who testified that his written report did not

[2] Throughout the record, Larry Chatman is also referred to as "Larry Chapman."
[3] It is not clear whether counsel's reference to "he" meant Lang or Logan.

reflect that Smith had told the authorities that Lang was seated in the backseat of the vehicle at the time of the shooting. Detective Matias also acknowledged that Smith told him that she had dated Lang for two years, but Detective Matias did not include that information in his report.

¶ 35 The defense then presented multiple stipulations, including the following. Detective Garcia[4] of the Chicago Police Department would testify that he interviewed Lang on March 10, 2005, and Lang never stated that he viewed the shotgun before the incident or that he witnessed "Knuckles" give the shotgun to defendant. Detective Sandoval would testify that he spoke with Chandler in the early morning hours of August 8, 2004, and she relayed that she had viewed a dark colored handgun; based on that conversation, the offender was described "as a male black, eighteen to 23 years of age." Officer O'Kendall of the Chicago Police Department would testify that he interviewed Chandler on the evening of August 7, 2004; she could not describe the weapon, and her description of the shooter was recorded as "male black unknown." During her grand jury testimony, Smith denied knowing the name of "Big-B."

¶ 36 *Closing Arguments and Guilty Findings*

¶ 37 Defense counsel argued that Lang was the "singular person who had the motive to commit this offense," given his participation in and anger regarding the earlier fight. Counsel noted that Lang was in the white vehicle, and that he had a closer connection to the witnesses (who identified defendant as the shooter) than defendant had. Counsel also observed that Lang had fled to Minnesota and again fled when pursued by police officers in St. Paul. Counsel argued that the sole evidence of a gang retaliation motive for the shooting was through Lang's testimony. Counsel ultimately suggested that defendant was an "outsider" who was "more expendable," and that "[g]ossip" may have caused community members to identify defendant as

[4] The first names of certain police officers do not appear to be included in the record.

the shooter. The State responded, in part, that it was understandable that certain witnesses to the shooting initially "clam[med] up," as they knew the vehicle occupants from the neighborhood.

¶ 38 After summarizing certain testimony, the trial court found defendant guilty on all counts and found that he personally discharged the weapon which caused Wilson's death.

¶ 39 *Posttrial Motions and Sentencing*

¶ 40 Defendant filed a motion to reconsider the guilty finding or, in the alternative, for a new trial. He argued, in part, that his guilt was not established beyond a reasonable doubt where the evidence was "conflicting, incredible, and inconsistent." Defendant also challenged the admission of gang-related evidence, and he contended that the trial court erred by not allowing Chatman to testify as to "admissions of culpability" made by Lang. After hearing arguments, the trial court denied the motion.

¶ 41 During the sentencing hearing, a victim impact statement from Davis (Wilson's mother) was read to the trial court. Vernetta Erves (Vernetta), defendant's paternal grandmother, testified that she raised defendant and that she was not aware of his involvement in a gang or in any physical fights. According to his grandmother, defendant could read at four years old and was a "B/C" student. In allocution, defendant apologized to Davis but denied shooting her son.

¶ 42 Defendant was sentenced to a 30-year prison term for the first-degree murder conviction and an additional 25-year sentencing enhancement for his personal discharge of a firearm resulting in Wilson's death, for a total sentence of 55 years. Defendant filed a motion for reduction of sentence, which was denied. He then timely filed an appeal.

¶ 43 *Original Appeal*

¶ 44 Defendant argued on appeal that he was denied a fair trial where Chatman was improperly permitted to invoke the fifth-amendment privilege against self-incrimination and

where the trial court barred the parties from questioning Chatman. In an order entered on September 15, 2008, this court affirmed defendant's conviction and sentence. *People v. Erves*, No. 1-07-0333 (unpublished order under Illinois Supreme Court Rule 23). We found, in part, that the trial court exercised its "sound discretion" in concluding that "it was not perfectly clear that Chatman could not incriminate himself if he were to testify." *Id.*

¶ 45 *Postconviction Petition*

¶ 46 Defendant, through new private counsel, filed a petition for postconviction relief under the Post-Conviction Hearing Act (Act) (725 ILCS 5/122-1 *et seq.* (West 2008)) in 2009. In the petition, defendant asserted claims of actual innocence and ineffective assistance of trial counsel.

¶ 47 As to the actual innocence claim, defendant submitted affidavits from Jackson and Tremonte Mack (Mack), who each averred that he observed Lang (and not defendant) shoot Wilson. Among other things, Mack recognized an "Ooka" tattoo (Lang's nickname) on Lang's neck as he sat in the front passenger seat of the vehicle. Defendant also submitted the affidavit of Antonio Winters (Winters), who averred that Brenda Chandler was not at the scene at the time of the shooting. As to the ineffective assistance claim, defendant argued that his trial counsel rested without calling any witnesses despite knowing that Jackson had told counsel that he observed Lang (and not defendant) shooting Wilson. While Jackson was listed as a potential witness in a discovery response and appeared at court, he was not called to testify.

¶ 48 The trial court advanced the petition to a second-stage proceeding under the Act, and the State subsequently filed a motion to dismiss the petition. As to the actual innocence claim, the State maintained that Winters' affidavit impeached a State witness (Chandler) but was not evidence of actual innocence. The State further argued that the affidavits of Jackson and Mack were not newly discovered. As to the ineffectiveness claim, the State argued that defense

counsel's decision to not call Jackson was a matter of trial strategy.

¶ 49 The circuit court entered an order in May 2011 granting the State's motion and dismissing defendant's postconviction petition. The circuit court subsequently denied defendant's motion for reconsideration of the dismissal order, and defendant filed a timely appeal. In an order entered on December 14, 2012, this court reversed and remanded for a third-stage evidentiary hearing. *People v. Erves*, 2012 IL App (1st) 112813-U.

¶ 50 In December 2014, defendant (represented by appointed counsel) filed a "Supplemental Issue for Post-Conviction Relief." Citing *Miller v. Alabama*, 567 U.S. 460 (2012), and other cases, defendant maintained that "[w]ith the developments made in the area of understanding the scientific basis for the fundamental differences between adults and juveniles in brain developmen[t] as understood in 2006"—when defendant was sentenced—"as opposed to today, a 55[-]year sentence imposed on [defendant] which produced a *de facto* natural life sentence should be re-evaluated for its constitutionality." Defendant requested that the circuit court allow consideration of a supplemental issue, *i.e.*, the constitutionality of defendant's sentence, if relief was denied at the evidentiary hearing.

¶ 51 Defendant also filed a supplemental exhibit in support of his actual innocence claim: the affidavit of Christopher Moore (Moore), who averred that Lang confessed to him that Lang was the shooter.

¶ 52 *Third-Stage Evidentiary Hearing*

¶ 53 The third-stage evidentiary hearing commenced in March 2015; the testimony and other evidence included the following.

¶ 54 Antonio Winters

¶ 55 Winters testified that he was 17 years old in the summer of 2004. He knew "Ooka"

(Lang) and "Big-B" (Logan), who he described as an older "gang banger in the neighborhood." Winters also knew defendant, "Knuckles" (Jackson), Chandler, Smith, and Wilson. On the evening of August 7, 2004, Winters was at his girlfriend's residence in the 2300 block of West Washington. He heard a gunshot and then heard Chandler yelling hysterically. According to Winters, Chandler was near his girlfriend's residence, not at the corner where the shooting occurred. Winters testified that it took 35 or 45 seconds for him to walk to the corner after the shooting, and that Chandler had passed him as he walked.

¶ 56 Winters also testified that he conversed with Bryant Erves, Sr. (Erves Sr.), defendant's father, in the summer of 2009. During a conversation about basketball, Erves Sr. told Winters that his son was in jail for Wilson's murder. On a subsequent occasion, Winters signed an affidavit regarding what he heard and observed on the night of August 7, 2004.

¶ 57 During cross-examination, Winters acknowledged that he did not know whether Chandler was at the corner when the shooting occurred and subsequently ran down the block. The ASA also questioned Winters regarding a conversation among the ASA, Winters, and an investigator in March 2010. Winters denied telling the ASA and the investigator that he was with Erves Sr. at Winters' girlfriend's residence on the night of the shooting. Winters also testified that he told the investigator that two of the individuals in a white vehicle he viewed driving down Washington after the shooting looked like defendant and Lang.

¶ 58 During redirect examination, Winters testified that Erves Sr. showed him papers during their conversation in 2009 which appeared to contain the testimony of Chandler and Smith.

¶ 59 Bryant Erves, Sr.

¶ 60 Erves Sr. testified that he was in prison when his son was arrested for Wilson's murder. Years later, in 2009, he met Winters. At that point, Erves Sr. had received the transcript of

defendant's trial from his mother (Vernetta). Erves Sr. showed the transcript to Winters, and Winters agreed to sign an affidavit regarding his knowledge of the incident. Erves Sr. took Winters to a currency exchange, where Winters' affidavit was notarized.

¶ 61 Erves Sr. was questioned regarding his 13 felony convictions during cross-examination. Erves Sr. testified that he only met Winters on one occasion, and they did not discuss basketball.

¶ 62 Larry Chatman

¶ 63 Chatman testified that he was a former TVL gang member who resided in Stateville Correctional Center (Stateville) at the time of the hearing. He knew defendant but had no knowledge of defendant being in a gang. Chatman also knew Logan and Lang ("Ooka") as TVL members.

¶ 64 Chatman testified that while he waited in a "bullpen" outside of Judge Sumner's courtroom in 2005 or 2006, Lang called out to him and the two conversed. Chatman asked Lang "was he about to come to court on somebody," as Chatman had heard that Lang intended to testify against "Truck," which was one of defendant's nicknames. According to Chatman, Lang stated that Logan killed Wilson. Chatman subsequently informed defendant of this conversation and spoke with defendant's attorneys.

¶ 65 During cross-examination, Chatman denied telling defendant's attorneys that Lang (not Logan) was the shooter. Chatman also denied telling defendant's attorneys that he was a "five star universal"—a high-ranking leader—who was directing TVL activities from jail at the time.

¶ 66 Carnell Jackson

¶ 67 Jackson testified that he met defendant while dating defendant's cousin. Jackson denied ever owning a shotgun or giving a shotgun to defendant. On the evening of the shooting, Jackson was walking with his daughter and her mother near the intersection of Maypole Avenue

and Oakley when he noticed "Ooka" (Lang) in a parking lot, arguing with Ooka's sister. Jackson then observed a white vehicle—which he identified as defendant's vehicle—exiting the alley. According to Jackson, Lang fired a shotgun from the passenger seat at Wilson. Jackson testified he was the first individual at the scene, and he held Wilson in his arms until "the crowd came."

¶ 68 Jackson testified that after defendant was charged with Wilson's murder, Jackson told defendant's grandmother that Lang (and not defendant) shot Wilson. Jackson subsequently met with Barney Balonick (Balonick), one of defendant's trial attorneys. Even though Jackson attended defendant's trial, he was never called to testify.

¶ 69 During cross-examination, Jackson testified that Wilson was shot as he crossed an intersection and flew back 15 feet from the shot; Jackson admitted that such details were not included in his 2009 affidavit.[5] Jackson denied that the vehicle exited the alley at a speed of 30 miles per hour, as he had averred in a prior affidavit. Jackson also was questioned regarding his criminal history, including two arrests with Chatman.

¶ 70 Tremonte Mack

¶ 71 Mack testified that he observed defendant's vehicle speeding on the night of Wilson's shooting. An "unknown black male" was driving, and Lang sat in the front passenger seat. Mack testified that defendant was not in the vehicle. Lang "exchanged words" with the crowd standing on the corner of Washington and Oakley, and then Lang shot Wilson. Mack identified Wilson as his first cousin.

¶ 72 Mack testified that he immediately ran to the residence of "Auntie" Michelle Davis (Wilson's mother) and "told her that I just seen her son get shot." Mack further testified that,

[5] Carnell Jackson signed two separate affidavits—one obtained by attorney Balonick and a subsequent affidavit executed in 2009.

approximately one week after the shooting, he informed Davis that Lang was the shooter. Shortly thereafter, Mack was in custody for approximately six months. Mack testified that he first learned from defendant that he had been convicted of Wilson's murder while both men were in segregation at Stateville in March 2007.

¶ 73 During cross-examination, Mack confirmed that he read and signed, but did not write, the affidavit wherein he averred that he recognized Lang from a tattoo on the right side of his neck. He also testified that his conversation with Davis—wherein he relayed that Lang was her son's shooter—occurred on the same day as the shooting, not a week later.

¶ 74 Christopher Moore

¶ 75 Moore, who was in prison for murder at the time of the evidentiary hearing, testified that he first heard that Wilson was murdered in June 2004. Moore knew both defendant and Lang.

¶ 76 Moore testified that he was walking through a "bullpen" in a tunnel between the courthouse and the jail at some point in late 2006 when Lang, who was standing 12 feet away, called his name. While discussing neighborhood news, Lang stated that he "just got out of jail." Lang explained, "I lied on Little Brian; I had did a murder and I put it off on him." According to Moore, defendant is "Little Brian." Moore testified that this topic "just came out the blue" and that Lang laughed and clapped his hands in a "joyful" manner as he spoke to Moore.

¶ 77 Moore testified that he did not tell anyone about the foregoing conversation until he talked to defendant in Menard Correctional Center (Menard) and agreed to sign an affidavit. During cross-examination, Moore acknowledged that he observed defendant at Menard in 2014 before signing the affidavit in 2015. Moore also testified that approximately 30 other individuals were in the bullpen in late 2006 when Lang confessed to the murder.

¶ 78 Michelle Davis

¶ 79 The State called Davis, Wilson's mother, who testified that she did not know Tremonte Mack and that her daughter, Daisha Davis, informed her that Wilson had been shot.

¶ 80 Barney Balonick

¶ 81 Balonick, defendant's trial attorney who subsequently moved to California, was flown in by the State to testify at the evidentiary hearing. During his representation of defendant, Balonick spoke with defendant approximately 10 to 12 times and investigated various witnesses. Before and during the trial, Balonick spoke with Carnell Jackson in person on three or four occasions, including at the intersection where the shooting occurred.

¶ 82 Even though Jackson was his sole eyewitness, Balonick testified that he ultimately decided not to call Jackson to testify at trial for two reasons. Balonick had learned that Jackson was not only a convicted felon but was on probation in a case before the judge presiding over defendant's trial. Balonick also was concerned about an "accuracy problem" or a "vantage point problem" with Jackson's recitation of events. According to Balonick, "there was no way that [Jackson] was on the same side of the street that [*sic*] the passenger—which is where everyone said the shot came out." While Balonick admitted that he "wrestled" with the issue, he made a "strategic decision" to not have Jackson testify at trial.

¶ 83 Calvin Merritt

¶ 84 Over the State's objection, the defense was permitted to reopen their case and present a final witness, Calvin Merritt (Merritt). At the time of the evidentiary hearing, Merritt was incarcerated in Stateville. Merritt testified that in late 2005 or early 2006, he met "Truck" while they briefly resided on the same tier in jail; Merritt identified defendant in court as Truck. In July or August 2006, Merritt also met "Ooka" (Lang) in jail. Ooka informed Merritt that "he had

lied on Truck and said that Truck had did the murder. But he told me that he had actually did the murder." Ooka informed Merritt that he was pressured by the police to testify that Truck committed the murder. Merritt testified that he subsequently conversed on multiple occasions with Ooka while both men were at Stateville. Years later, Merritt relayed this information to another prisoner, who then eventually relayed the information to defendant.

¶ 85 Glenn Jackson

¶ 86 After defendant rested, the State called Glenn Jackson, the chief records officer for the Illinois Department of Corrections (IDOC). Based on a review of IDOC records, he testified that Lang did not have a neck tattoo, but defendant did have a neck tattoo. He also testified that Mack should not have been in segregation at Stateville in March 2007 and that defendant was in Menard (not Stateville) from January 10, 2007, until January 7, 2015.

¶ 87 *Circuit Court Ruling Following Evidentiary Hearing*

¶ 88 The circuit court entered an 18-page order denying the postconviction petition on July 13, 2016, which detailed each witness's testimony and the circuit court's assessment thereof. As to the ineffective assistance claim, the circuit court found that Balonick was not ineffective for failing to call Jackson to testify at defendant's trial. In rejecting defendant's actual innocence claim, the circuit court found that the evidence presented at the third-stage proceeding "does not contain a semblance of credibility." The circuit court wrote:

> "The Court finds the testimony of Antonio Winters, Larry Chatman, Bryant Erves, Sr., Carnell Jackson, Tremonte Mack, Christopher Moore and Calvin Merritt to be incredible beyond a reasonable doubt. They are figuratively and in some cases literally a 'Murderer's Row' of mendacity."

The supplemental postconviction issue—whether there was a *Miller* violation based on a *de facto*

life sentence—was held in abeyance until after the evidentiary hearing. The State then filed a motion to dismiss as to this issue, which defendant opposed. The circuit court denied his *Miller* claim for a new sentencing hearing and his motion to reconsider; defendant filed a timely appeal.

¶ 89 *Initial Appeal from Third-Stage Denial of Claims*

¶ 90 Defendant appealed from the third-stage denial of his postconviction petition. The State conceded that the trial court did not apply the *Miller* factors when considering defendant's sentence and thus joined defendant in arguing that he was entitled to a new sentencing hearing.

¶ 91 In an opinion filed on December 31, 2020, we noted that the trial court's finding that a 55-year prison term is not a *de facto* life sentence was "indisputably error, in hindsight," given the evolving jurisprudence regarding juvenile sentencing. *People v. Erves*, 2020 IL App (1st) 171135, ¶ 30. Based on a review of the proceedings before the trial court, we concluded that the *Miller*-related factors were not properly considered. *Id.* ¶ 42. We thus vacated defendant's sentence and reversed and remanded for a new sentencing hearing. *Id.* ¶ 47. We further found that consideration of defendant's other postconviction claims was premature, *i.e.*, the claims could be altered or rendered moot by the newly imposed sentence. *Id.* ¶¶ 5-7 (discussing *People v. Edgecombe*, 2011 IL App (1st) 092690, ¶ 31). The circuit court subsequently remanded defendant to the Cook County Department of Corrections (CCDOC) to await resentencing.

¶ 92 *New Sentencing Hearing*

¶ 93 Defendant (through appointed counsel) filed a sentencing memorandum, arguing that (a) the applicable sentencing range was 20 to 40 years (730 ILCS 5/5-4.5-20(a) (West 2022); *People v. Buffer*, 2019 IL 122327, ¶ 41), (b) he was not eligible for a sentence of life without parole or an extended term sentence (730 ILCS 5/5-8-1 (West 2022)), (c) he could not be sentenced to a *de facto* life sentence, *i.e.*, a sentence of more than 40 years (*Buffer*, 2019 IL

122327, ¶ 41), and (d) before imposing any sentence, the circuit court was required to consider the relevant mitigating factors associated with defendant's youth at the time of the offense.

¶ 94 A sentencing hearing was conducted on June 6, 2024.[6] An ASA was asked to publish a statement by Wilson's sister on behalf of her family. Wilson's sister discussed her 15-year-old brother's dancing and basketball skills and his role as a supportive leader for his younger siblings. She described the family trauma caused by her brother's violent death and the "revisit[ing]" thereof during court proceedings.

¶ 95 The ASA also published records regarding defendant's behavior while in CCDOC and IDOC. Defendant had four tickets from CCDOC, including one from April 2022, where 21 strips of paper which were saturated with an unknown substance were found in a tied-up surgical mask recovered from his crotch. In May 2024, a CCDOC guard tried to restrain defendant after he noticed a sock hanging out of the front of defendant's pants. Defendant resisted being handcuffed, and the sock was found to contain a hard, wooden brush. He also had 15 tickets from IDOC, including two for fighting and one for possession of marijuana.

¶ 96 In mitigation, defendant's mother, Anjahrae Willis (Willis), testified that she gave birth to defendant when she was 15 years old. They lived with her mother, who was addicted to drugs. Willis sent defendant to live with Vernetta, his paternal grandmother, when he was 3 or 4 years old; defendant stayed with Willis on weekends. When defendant was approximately 14 years old, Vernetta moved from a safer area in the suburbs to a more dangerous area in Chicago near the former Henry Horner Homes, a public housing project. At that point, defendant "drastically" changed and became involved with gangs and drugs, while Erves Sr. was "in and

[6] Although Judge William G. Lacy presided over the bench trial and earlier postconviction matters, Judge William G. Gamboney presided over the sentencing hearing in 2024.

out of jail." Despite defendant's 20-year incarceration commencing at age 17, Willis testified that he had a "[v]ery supportive" family who would actively help him after incarceration.

¶ 97 Vernetta testified that she moved back to a neighborhood in Chicago as she (incorrectly) understood that the neighborhood was improving. Prior to the move, defendant was a good student and a truthful person. According to Vernetta, the "trouble started" after the move. Defendant fraternized with their neighbors, who used firearms and "all kind of crazy nonsense."

¶ 98 Nidiea Yarbrough (Yarbrough), defendant's aunt, testified regarding the unsafe neighborhood where defendant moved as a teenager. She believed he had matured in prison; he consistently called her, and he remembered her and her son's birthdays. Yarbrough testified that defendant would reside with her family after his release from prison.

¶ 99 Keya Erves (Keya), defendant's first cousin, testified that defendant's neighborhood in Chicago was disorderly as compared to her grandmother's structured home. Although she described her relationship with defendant after his arrest as "stressed," Keya testified she would help defendant financially upon his release from prison.

¶ 100 Another cousin, Kevin Roberts (Roberts), testified that defendant was "[e]nthusiastic," "very intelligent," and "very helpful" as a child. When defendant and his grandmother moved to Chicago, their new neighborhood was "violent," and gang activity was rampant. According to Roberts, defendant did not have consistent male role models. Despite his current circumstances, Roberts described defendant as having a "positive and loving energy." Roberts testified that defendant could attend truck-driving school or become an electrician after prison.[7]

¶ 101 Defendant's sister Keyonna Erves testified that their childhood was difficult, as their

[7] The record includes a letter dated February 12, 2024, recommending defendant for an electrician apprenticeship program.

father was "in and out of prison." As a teenager, defendant started "sneaking," and he was influenced by his peers. She testified that defendant had become supportive and communicative during his incarceration, particularly after their father's death.

¶ 102 In allocution, defendant extended sympathy to Wilson's family for their loss. He maintained that he "made a grave mistake giving someone I thought was a friend a ride." Defendant stated he had matured in prison and was "able to make better decisions through coping mechanisms, meditation, and mindfulness." He earned multiple certificates through correspondence courses to better himself, despite receiving no formal credit for the courses.

¶ 103 The circuit court was also provided with a mitigation report prepared by Helen Kim Skinner (Skinner), an attorney and licensed clinical social worker. The mitigation report described defendant's early childhood experiences, including Erves Sr.'s involvement in TVL gang activity. The report then described the impact of defendant's time living with Vernetta, including the juxtaposition of Vernetta's authoritativeness with his mother's permissiveness. When defendant was nine years old, Erves Sr. commenced using corporal punishment on him, striking him with a belt, an ironing cord and, on one occasion, a lead pipe. At age 10, defendant was sexually abused by a male friend of his cousins, which caused him fear and shame. Defendant developed behavioral problems and began using drugs and alcohol. Vernetta enrolled him in an inpatient treatment program; he secured his discharge by faking suicidal ideation. When Vernetta moved to Chicago, defendant became friendly with Lang and other "new boys."

¶ 104 The mitigation report provided details regarding defendant's prison disciplinary record, which Skinner essentially characterized as modest given his relative youth and his lengthy sentence. The report also discussed his mental health diagnoses, including depression, anxiety, and post-traumatic stress disorder (PTSD). The attachments to the report included a transcript

and various certifications relating to the dozens of courses completed by defendant.

¶ 105 During closing arguments, the ASA argued that defendant's sentence should be in the range of 40 years, noting Wilson's young age and the violent nature of his death by shotgun. The ASA also observed that defendant continued to commit infractions while incarcerated. Defense counsel noted the holding in *Miller* that "children are different," *i.e.*, they possess less maturity and greater impulsivity and risk-taking due to their incomplete brain development. Defense counsel also argued that the difficulties defendant experienced in his life—as detailed in the mitigation report—made him "incredibly susceptible to peer pressure." As to the tickets received by defendant from the CCDOC, defense counsel argued that it was "pure speculation" to characterize the hairbrush as a weapon or to assume the paper strips contained drugs. Defense counsel argued that defendant's sentence should be the 20-year minimum or close thereto.

¶ 106 At the conclusion of the hearing, the circuit court discussed various statutory aggravating factors and mitigating factors, as well as statutory sentencing factors for individuals who were under the age of 18 at the time of the offense. The circuit court ultimately declined to impose any firearm sentencing enhancements and sentenced defendant to 30 years' imprisonment. The circuit court denied defendant's motion to reconsider sentence, and he timely filed this appeal.

¶ 107 ANALYSIS

¶ 108 Defendant advances three primary arguments on appeal. He initially contends that he made a substantial showing that he is entitled to a new trial, as "the newly-discovered testimony of seven witnesses is non-cumulative and conclusive evidence" of his innocence which would likely change the result on retrial. He next asserts that he made a substantial showing that his trial counsel was ineffective for failing to call Carnell Jackson to testify that he witnessed the shooting and that Lang was the shooter. Finally, defendant maintains that his 30-year sentence is

excessive based on the significant mitigation evidence, including his youth and impressionability at the time of the offense, his challenging childhood, and his "nearly complete rehabilitation and self-improvement." We begin our analysis with a brief overview of the Act.

¶ 109 *Overview of the Act*

¶ 110 The Act provides a framework for incarcerated individuals to collaterally attack their convictions by establishing the substantial denial of a constitutional right during their trial or sentencing. *People v. Edwards*, 197 Ill. 2d 239, 243-44 (2001); 725 ILCS 5/122-1(a)(1) (West 2024). Proceedings under the Act occur in three stages. *People v. Gaultney*, 174 Ill. 2d 410, 418 (1996). At the first stage, the circuit court independently reviews the postconviction petition within 90 days of its filing and determines whether it is frivolous or is patently without merit. *Edwards*, 197 Ill. 2d at 244; 725 ILCS 5/122-2.1(a) (West 2024). If the court determines that the petition is either frivolous or patently without merit, the court must dismiss the petition in a written order. *Id.* A petition which is not summarily dismissed advances to the second stage for further proceedings. *People v. Addison*, 2023 IL 127119, ¶ 18.

¶ 111 At the second stage, the court may appoint counsel to represent an indigent defendant and, if necessary, to file an amended petition; the State may either move to dismiss or answer the petition. *Gaultney*, 174 Ill. 2d at 418; 725 ILCS 5/122-4, 122-5 (West 2024). If the court appoints counsel at the second stage, Illinois Supreme Court Rule 651(c) requires that the record demonstrates that counsel consulted with the defendant, examined the record of the trial proceedings, and made any necessary amendments to the petition. Ill. S. Ct. R. 651(c) (eff. July 1, 2017).

¶ 112 If the petition and the accompanying documentation make a substantial showing of a constitutional violation, the petition will proceed to the third stage, an evidentiary hearing on the

merits. *Edwards*, 197 Ill. 2d at 246; 725 ILCS 5/122-6 (West 2024). "At a third-stage evidentiary hearing, the trial court acts as factfinder, determines witness credibility and the weight to be given to particular testimony and evidence, and resolves any evidentiary conflicts." *People v. Ayala*, 2022 IL App (1st) 192484, ¶ 97. The circuit court must determine whether the introduced evidence demonstrates that the defendant is entitled to relief. *People v. Domagala*, 2013 IL 113688, ¶ 34. See *People v. King*, 316 Ill. App. 3d 901, 913 (2000) (providing that the circuit court must determine whether to grant or deny a postconviction petition based on the evidence presented at the evidentiary hearing). "Ultimately, a new trial is warranted if all facts and surrounding circumstances, including the new evidence, warrant closer scrutiny to determine the guilt or innocence of the defendant." *People v. Montes*, 2024 IL App (2d) 230453-U, ¶ 36.

¶ 113 Where factfinding and credibility determinations are involved in a third-stage evidentiary hearing, a reviewing court will not reverse the decision of the circuit court unless it is manifestly erroneous. *Pendleton*, 223 Ill. 2d at 473. A decision is manifestly erroneous "when the opposite conclusion is clearly evident." *People v. Coleman*, 2013 IL 113307, ¶ 98. See *People v. Wells*, 182 Ill. 2d 471, 481 (1998) (noting that "[m]anifestly erroneous means arbitrary, unreasonable and not based on the evidence").

¶ 114 *Actual Innocence Claim*

¶ 115 Defendant asserted a claim of actual innocence in his postconviction petition. The due process clause of the Illinois Constitution "affords postconviction petitioners the right to assert a freestanding claim of actual innocence based on newly discovered evidence." *People v. Ortiz*, 235 Ill. 2d 319, 333 (2009). See Ill. Const. 1970, art. 1, § 2; *People v. Washington*, 171 Ill. 2d 475, 489 (1996) (providing that "no person convicted of a crime should be deprived of life or liberty given compelling evidence of actual innocence").

¶ 116 The elements of an actual innocence claim are that the evidence must be newly discovered, material and not merely cumulative, and of such conclusive character that it would probably change the result on retrial. *People v. Edwards*, 2012 IL 111711, ¶ 32. Evidence is "new" if it is discovered after trial and could not have been previously discovered through the exercise of due diligence. *Coleman*, 2013 IL 113307, ¶ 96. Evidence is "material" if it is relevant and probative of the defendant's innocence and "noncumulative" if it adds to what the factfinder heard. *Id.* "And conclusive means the evidence, when considered along with the trial evidence, would probably lead to a different result." *Id.* A defendant bears the burden of demonstrating a denial of a constitutional right by a preponderance of the evidence. *Id.* ¶ 92. See *People v. McCoy*, 2026 IL 131565, ¶ 50.

¶ 117 The arguments in this case focus on the final factor, *i.e.*, whether the evidence was conclusive. As our supreme court has recognized, the conclusive character of the new evidence is the most important element of an actual innocence claim. *Id.* ¶ 54; *People v. Robinson*, 2020 IL 123849, ¶ 47. We thus may affirm the denial of an actual innocence claim "based on the finding that the defendant failed to establish the conclusive character element." *McCoy*, 2026 IL 131565, ¶ 54.

¶ 118 Defendant argues on appeal that the State's witnesses at trial were not credible compared to his "seven new witnesses" at the third-stage evidentiary hearing who refuted the "old" evidence. While defendant contends that the circuit court categorically and summarily rejected these witnesses as a " 'Murderer's Row' of mendacity," the record reflects that the circuit court thoroughly considered the evidence, and the order denying the petition set forth a detailed description of the testimony and the court's impressions thereof. To the extent that the circuit court expressed skepticism or disbelief regarding the witnesses' testimonies—and noted their

criminal histories—such assessments or observations as to the witnesses' credibility (or lack thereof) were well within the court's province as factfinder. *Domagala*, 2013 IL 113688, ¶ 34. See *McCoy*, 2026 IL 131565, ¶ 54 (providing that credibility determinations "are uniquely appropriate for trial judges to make, and we will not second-guess such credibility findings").

¶ 119 Based on our review, a significant portion of the testimony at the hearing was inconsistent, unhelpful, or, in certain instances, incredible. For example, Erves Sr. and Winters provided conflicting testimony regarding the timing and substance of their meeting. Winters admitted he did not know whether Chandler was at the scene at the time of the shooting. Winters also testified that he noticed two individuals in a white vehicle who looked like Lang and defendant—a fact which arguably bolsters the State's case. Chatman's testimony that Lang named Logan as the shooter directly opposed the testimony of most of the other witnesses. Mack testified that he was Wilson's cousin and he informed Davis (Wilson's mother) that her son was shot, but Davis testified that she did not know him. Although Mack claimed to recognize Lang from the "Ooka" tattoo on his neck as he sat in the front passenger seat of the white vehicle, the IDOC chief records officer testified that defendant (and not Lang) had a neck tattoo. Mack also testified that he and defendant were both in segregation at Stateville in March 2007, while IDOC records confirmed that defendant was housed at another prison at that time.

¶ 120 Moore testified that he heard about the fatal shooting in June 2004, which was two months before the shooting occurred. According to Moore, Lang spontaneously confessed to Wilson's murder while in a "bullpen" at the courthouse in 2006. In its order denying the postconviction petition, the circuit court found it to be "beyond comprehension that Clarence Lang, a seasoned gang member who is no stranger to the criminal justice system, would yell out across 12 feet of a crowded jail bullpen that he committed murder and put it on someone else."

Defendant appears to suggest on appeal that Lang's unprompted admissions to Moore—as well as Chatman and Merritt—were understandable, given that "[g]ang members have been known to brag or celebrate about the fact that someone else took the fall for their crimes." The cases cited by defendant for this proposition, however, are inapposite. *Montes*, 2024 IL App (2d) 230453-U, ¶ 24 (gang expert testified that he expected a gang member to "ecstatically celebrate and brag" about a rival gang member "[taking] the fall for something he did"); *People v. Jaimes*, 2019 IL App (1st) 142736, ¶ 69 (in rejecting a challenge to the introduction of evidence under the co-conspirator exception to the hearsay rule, the appellate court noted that the boastful statements "could all have reasonably served a purpose of encouraging other gang members to participate in the ongoing conspiracy to harm members" of a rival gang). Furthermore, as noted above, the circuit court found that Moore, Chatman, and Merritt lacked credibility—findings which were amply supported by the court's observations regarding their demeanors and the inconsistency or implausibility of their testimonies. *E.g.*, *People v. Morgan*, 2015 IL App (1st) 131938, ¶¶ 67-69.

¶ 121 Defendant finally contends that the circuit court failed to adopt the "comprehensive approach" set forth in *People v. Coleman*, 2013 IL 113307—*i.e.*, consideration of whether the evidence presented at the third-stage evidentiary hearing "places the evidence presented at trial in a different light and undercuts the court's confidence in the factual correctness of the guilty verdict." *Id.* ¶ 97. According to defendant, the circuit court did not engage in a predictive inquiry as to what a new trier of fact would likely do, "considering all the evidence, both new and old, together." *Id.* Simply put, we are unpersuaded by defendant's challenges based on *Coleman*. In the instant case, the same judge presided over the bench trial and the third-stage evidentiary hearing. After closing arguments at the evidentiary hearing, the circuit court stated that it would take time to review the extensive case file, including the "original trial testimony."

In its subsequent written order denying the petition, the circuit court expressly noted that it reviewed the transcripts of the evidentiary hearing and the transcripts of the trial. The circuit court referenced Chatman's refusal to testify at defendant's trial and was cognizant of trial witness Lang's deficiencies, describing him as "a seasoned gang member who is no stranger to the criminal justice system." Following an exhaustive discussion of the evidentiary hearing testimony and the applicable case law (including *Coleman*), the circuit court concluded that the evidence presented during the hearing "does not contain a semblance of credibility."

¶ 122 "Although new evidence need not necessarily establish the defendant's innocence, it must establish a basis for closer scrutiny of the defendant's guilt." *People v. Gonzalez*, 407 Ill. App. 3d 1026, 1037 (2011). In this case, the testimony provided at the third-stage evidentiary hearing was not so conclusive as to defendant's alleged actual innocence to establish a basis for retrial. Accordingly, we cannot conclude that the circuit court's third-stage denial of defendant's actual innocence claim was manifestly erroneous.

¶ 123 *Ineffective Assistance Claim*

¶ 124 Defendant next contends that he made a substantial showing that his trial counsel was ineffective for failing to call Carnell Jackson to testify that he witnessed the shooting and that Lang was the shooter.

¶ 125 A defendant has a constitutional right to the effective assistance of counsel under the sixth amendment to the United States Constitution and the Illinois Constitution. *Domagala*, 2013 IL 113688, ¶ 36 (citing U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. 1, § 8). An ineffective assistance of counsel claim is subject to the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). See *People v. Hatter*, 2021 IL 125981, ¶ 25. "Under *Strickland*, a defendant must establish that counsel's performance fell below an objective

standard of reasonableness and the defendant was prejudiced by counsel's substandard performance." *People v. Agee*, 2023 IL 128413, ¶ 50. Both prongs of the *Strickland* test must be satisfied before a defendant can prevail on a claim of ineffective assistance of counsel. *People v. Coleman*, 183 Ill. 2d 366, 397 (1988).

¶ 126 To satisfy the performance prong of *Strickland*, a defendant "must prove that counsel made errors so serious, and that counsel's performance was so deficient, that counsel was not functioning as the 'counsel' guaranteed by the sixth amendment." *People v. Evans*, 186 Ill. 2d 83, 93 (1999). "The court gives a great amount of deference to counsel's judgment and indulges a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *People v. Bell*, 2021 IL App (1st) 190366, ¶ 63. *Strickland*, 466 U.S. at 689 (requiring "highly deferential" judicial scrutiny of an attorney's performance; observing that "[i]t is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable").

¶ 127 In this case, attorney Balonick met with Jackson on multiple occasions, including at the scene where the shooting had occurred. The issue is not whether he failed to investigate Jackson or failed to disclose him as a potential witness. See *People v. Deloney*, 341 Ill. App. 3d 621, 635 (2003). Rather, the issue is whether Balonick's decision to not call him as a witness at trial constituted substandard performance.

¶ 128 Decisions regarding which witnesses to call and which evidence to present are matters of trial strategy which are generally immune from claims of ineffective assistance of counsel. *People v. Williams*, 2017 IL App (1st) 152021, ¶ 38; *Deloney*, 341 Ill. App. 3d at 634. "It is the defendant's burden to overcome the presumption that counsel's decision not to call a witness was

a matter of trial strategy." *People v. Jones*, 323 Ill. App. 3d 451, 457 (2001).

¶ 129 Citing *People v. King*, 316 Ill. App. 3d 901 (2000), defendant maintains that "[t]rial counsel unreasonably failed to call Jackson as a witness where Jackson's testimony would have provided the trier of fact with direct evidence supporting the defense's theory that Lang was the shooter." The appellate court in *King* observed that a defendant can overcome the strong presumption that his attorney's strategic choice was sound "if counsel's decision appears so irrational and unreasonable that no reasonably effective defense attorney, facing similar circumstances, would pursue such a strategy." *Id.* at 916. While we agree with this proposition, the facts of *King* are wholly distinguishable from the instant case.

¶ 130 The defendant in *King* was a school bus driver charged with the abduction and sexual assault of a 17-year-old passenger; the defendant denied the allegations and maintained that he was never alone with the passenger. *Id.* at 903-04. The defendant provided his trial counsel with the name of the employee working as a bus attendant on the defendant's bus on the day of the alleged assault. *Id.* at 904. In an affidavit appended to defendant's postconviction petition, the bus attendant corroborated the defendant's version of the events and stated that she went to court on the day of the defendant's trial but she did not talk with the defendant's trial counsel or testify at the trial. *Id.* at 904-05. During a third-stage evidentiary hearing, the circuit court asked trial counsel about his decision to not call the bus attendant to testify. After noting that he spoke to the bus attendant once by telephone, trial counsel responded: "I chose not to call her. It was a matter of strategy. I do not recall specifically why I did not call her after speaking to her." *Id.* at 906. In reversing the circuit court's denial of the postconviction petition, the appellate court rejected the State's contention that trial counsel "may have reasonably concluded that [the bus attendant] would not be a credible witness." *Id.* at 916. The appellate court noted that trial

counsel did not testify regarding the bus attendant's lack of credibility and that the State failed to present any other evidence at the evidentiary hearing which provided a reasonable explanation for trial counsel's failure to call the bus attendant to testify. *Id.* at 916, 919.

¶ 131 Unlike the defendant's attorney in *King*—who could not recall his reasoning for not calling the witness—Balonick testified that he made the assessment that Jackson had a serious credibility problem not only due to his criminal background but also based on his questionable description of the shooting. Balonick testified, in part:

> "I wasn't going to make him change his testimony if that's what he wanted to say. As long as it wasn't unethical, I didn't have a problem with it. But there was no way that he was on the same side of the street that [*sic*] the passenger – which is where everyone said the shot came out. So when I coupled his vantage point problem along with the fact that he was on his Honor's probation at the time, he had a terrible credibility problem. And we even did [an Illinois Supreme Court Rule] 402 conference and it came out and Mr. Jackson was standing in the hallway. We told him that because of everything we learned *** – we knew that the State's Attorney at the time was going to just hammer him on cross. And I would lose the only eyewitness I had.
>
> It was better to have a no credibility problem than having an only credibility problem."

Balonick testified that he was concerned his sole eyewitness would be "slaughtered" during cross-examination; he thus decided to not call Jackson to testify and to "attack the State's case because it's their burden."

¶ 132 After discussing an attorney's obligation to not suborn perjury, the circuit court found that Balonick made a sound strategic decision to not call Jackson to testify at trial. As we cannot

conclude that the circuit court's finding was manifestly erroneous, we reject defendant's claim of error based on ineffective assistance of trial counsel. See *Jones*, 323 Ill. App. 3d at 458 (quoting *People v. McKenzie*, 263 Ill. App. 3d 716, 722 (1994)) (providing that a "trial counsel's apprehensions of what could occur when a witness is subject to the 'full brunt of adversarial cross-examination' has been found to be a reasonable basis for not calling a witness to testify"). We turn to defendant's final contention.

¶ 133 *Sentencing Challenge*

¶ 134 Defendant maintains that his 30-year sentence is excessive considering the "copious amounts" of mitigation evidence, including his youth and impressionability at the time of the offense, his difficult upbringing which included physical, emotional, and sexual abuse, and his "nearly complete rehabilitation and self-improvement."

¶ 135 The question of whether a sentence is excessive is reviewed for an abuse of discretion. *People v. Woodson*, 2024 IL App (1st) 221172, ¶ 88. An abuse of discretion occurs where the decision of the circuit court is "arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it" or "where a sentence greatly varies with the purpose and spirit of the law." *Id*.

¶ 136 The sentencing range for first degree murder is 20 to 60 years. 730 ILCS 5/5-4.5-20(a) (West 2024). As the trial court found that defendant discharged the firearm which caused Wilson's death, defendant was eligible for a 25-year sentencing enhancement which was discretionary based on his age at the time of the offense. 730 ILCS 5/5-8-1 (West 2024). During resentencing, the circuit court exercised its discretion and did not apply the firearm enhancement. The 30-year sentence imposed by the circuit court falls within the statutory range and is presumptively proper. See *People v. Busse*, 2016 IL App (1st) 142941, ¶ 27 (noting that a

sentence within the statutory range is presumed to be not excessive).

¶ 137 In imposing the sentence, the circuit court expressly considered the required statutory factors in mitigation and aggravation. See 730 ILCS 5/5-5-3.1 (West 2024) (listing mitigating factors); 730 ILCS 5/5-5-3.2 (West 2024) (listing aggravating factors). The circuit court also expressly considered the specific factors for sentencing an individual under the age of 18 at the time of the offense. See 730 ILCS 5/5-4.5-105 (West 2024). See also *Woodson*, 2024 IL App (1st) 221172, ¶ 89 (noting that section 5-4.5-105 of the Unified Code of Corrections adopts the factors enunciated in *Miller* and "makes them applicable to all sentences for crimes committed when the defendant is under 18"). While defendant challenges the relative weight assigned to these factors by the circuit court, we may not substitute our judgment for that of the circuit court "simply because we would have weighed the factors differently." *People v. Cavazos*, 2023 IL App (2d) 220066, ¶ 73. See *People v. Dominguez*, 255 Ill. App. 3d 995, 1004 (1994) (noting that "[w]here relevant mitigating evidence is before the court, it is presumed that the court considered it absent some indication in the record to the contrary other than the sentence itself").

¶ 138 Defendant raises specific challenges to the circuit court's findings at the sentencing hearing. According to defendant, the circuit court "claimed to have considered [defendant's] age, impetuosity, level of maturity, ability to consider risks, and consequences of behavior at the time of the offense," but the circuit court "actually disregarded this factor because [defendant] had made different representations to the probation officer when the [presentence investigation report] was being drafted back in 2006." We disagree with defendant's assessment. While the circuit court observed that the information provided to the probation officer in 2006 differed from the information compiled by Skinner in the mitigation report almost two decades later, the circuit court stated that it was "more likely to believe" Skinner regarding defendant's "very

troubled childhood." We also reject defendant's contention that the circuit court failed to "consider peer pressure as an important factor in the incident." The circuit court stated, in part, "there's been a suggestion throughout the hearing today that he picked bad friends, that he was subject to being influenced. And I believe the science suggests that also, that young people are more likely to be influenced by others than adults would be." Defendant further maintains that the circuit court was "factually wrong" when it stated that "defendant made arrangements to borrow the car" before the shooting. While this statement may have lacked precision—as Cartledge's testimony suggested that defendant had the vehicle for weeks before the shooting—the court's assessment of defendant's level of planning of the offense was otherwise accurate.

¶ 139 Finally, defendant compares his case to *People v. McKinley*, 2020 IL App (1st) 191907, wherein the appellate court modified the defendant's sentence based on the "overwhelming" evidence of defendant's rehabilitation, *e.g.*, defendant was admitted to a selective college program with the goal of attending law school, and he had zero disciplinary tickets during his 17 years in prison. In the instant case, the circuit court observed that defendant has "taken significant, substantial steps to rehabilitate himself." The record does not suggest that the circuit court disregarded the extent of defendant's rehabilitation, as was the case in *McKinley*. *Id.* ¶ 78.

¶ 140 Based on the foregoing, we find that the circuit court did not abuse its discretion in imposing a 30-year sentence, and we thus deny defendant's request to reduce his sentence. See *People v. Nooner*, 2026 IL App (1st) 241030, ¶ 54.

¶ 141 CONCLUSION

¶ 142 For the reasons discussed above, the judgment of the circuit court of Cook County is affirmed in its entirety.

¶ 143 Affirmed.