2017 IL App (3d) 150755-U

Order filed June 2, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-15-0755 Circuit No. 12-CF-2223
JEVON LESLEY,	)	Honorable Sarah-Marie F. Jones,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice Holdridge and Justice Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion in denying a motion for a continuance to substitute counsel filed one week before trial. The trial court did not err in admitting the prior inconsistent statements of two witnesses as substantive evidence. The trial evidence was sufficient to prove defendant guilty of first degree murder beyond a reasonable doubt. Defendant's sentence was not improper.

¶ 2 Defendant, Jevon Lesley, appeals his conviction for first degree murder. Specifically, defendant argues (1) his sixth amendment right to counsel of his choice was violated, (2) the prior inconsistent statements of two State witnesses were improperly introduced as substantive

evidence, (3) the evidence was insufficient to prove him guilty beyond a reasonable doubt, and (4) the trial court erred in considering defendant's prior convictions and gang affiliation in sentencing him. We affirm.

¶ 3 FACTS

¶ 4 On September 25, 2012, defendant was charged by complaint, later supplanted by indictment, with three counts of first degree murder (720 ILCS 5/9-1(a)(1), (a)(2), (a)(3) (West 2010)) for shooting Anthony Fearn with a firearm. Defendant was arraigned on November 6, 2012, and the public defender's office was appointed to represent him.

¶ 5 For over a year, defendant requested multiple continuances to review the discovery materials tendered by the State, complete defense disclosures, and interview potential witnesses. Some defense witnesses had moved out of state, and the public defender's office was having difficulty contacting them. On August 27, 2014, the parties agreed to set the case for trial on November 17, 2014.

¶ 6 On November 13, 2014, the State moved to continue the case after receiving a copy of a statement a witness had given to the public defender's investigator. The State said the statement was substantially different from the statement the witness had given to the police. That situation "caused there to be voluminous additional discovery." The court granted the continuance over defendant's objection. The parties agreed to set the trial for February 17, 2015.

¶ 7 On February 11, 2015, defense counsel moved for a continuance because the State had tendered recordings of over 200 hours of jail and prison telephone calls that counsel needed to review. Defense counsel advised the court that defendant was unhappy with the motion. Defendant told the court that he disagreed with the motion for a continuance. Defendant said the State was required to let his counsel know which telephone calls they were going to use. The

court advised defendant that he was incorrect. Defendant then stated he believed his public defenders should subpoena the individuals defendant spoke to on the phone and ask them what they discussed with defendant rather than listening to the recordings and "trying to make their own meaning for what they think [was] going on." The court advised defendant that the procedure he described would not be in his best interest. The court granted the continuance.

¶ 8 On February 17, 2015, the parties set the case for trial on June 22, 2015. On May 11, 2015, the State filed a motion to admit gang expert evidence and defendant filed a motion *in limine* to prevent the State from impeaching him with prior convictions if he chose to testify.

¶ 9 On June 15, 2015, Robert Lewin, a private attorney, appeared before the court and asked to enter his appearance on behalf of defendant and for a continuance. The following exchange occurred:

> "THE COURT: Mr. Lewin, you are going to file your appearance. You understand that that does not grant you an automatic continuance, sir?
>
> MR. LEWIN: I understand.
>
> * * *
>
> THE COURT: Does your client understand that?
>
> MR. LEWIN: Yes, Judge. My understanding, obviously I cannot argue something in front of the Court until I am statutorily—
>
> THE COURT: Okay.
>
> MR. LEWIN: So I would ask to file a motion for—I tender my appearance which I filled out."

¶ 10 Lewin then filed a written motion to continue. The motion stated: "This attorney knows nothing about the facts of this case and is respectfully asking this Honorable Court for a

continuance for trial." During his argument, Lewin stated "[defendant] has, after hearing from his mom and hearing from his dad, has decided that he would like my services." The State objected to the continuance, arguing that it was dilatory. The court denied Lewin's motion for a continuance and allowed him to withdraw. The court noted that the trial was set to begin on June 22, 2015, and the case had been pending since 2012. The court stated that defendant did not have "an unfettered right" to counsel of his choosing.

¶ 11 At the next hearing—approximately four days later—the State said it did not recall defendant ever expressing dissatisfaction with the public defender's office and asked to make a record as to whether defendant was dissatisfied with his counsel. The following exchange occurred:

> "[THE COURT:] [Defendant], have you—you have met with your public defenders on numerous occasions, is that accurate?
>
> THE DEFENDANT: Yes ma'am.
>
> * * *
>
> THE COURT: Do you still—I know that Mr. Lewin had come in and he had filed a motion to continue which I denied as untimely, and I got the impression from Mr. Lewin if the motion to continue was denied he didn't want to represent you because it wouldn't be fair to you.
>
> And you understand that, right, [defendant]?
>
> (A pause.)
>
> THE DEFENDANT: Yes, ma'am.
>
> THE COURT: And then are you satisfied at this time with the work that your lawyers have done for the last two plus years, [defendant]?

THE DEFENDANT: Yes ma'am."

¶ 12 One of the prosecutors stated that Lewin told her on June 10 that defendant's family had contacted him just prior to that date about representing defendant. The court asked defendant if that was correct, and defendant said yes. The court then stated: "Okay, and really, [defendant], you know, if I had—I denied the motion to continue and Mr. Lewin still wanted to be your attorney, that could have greatly affected your rights, don't you think, and the trial preparation, yes?" Defendant replied, "Yes, ma'am."

¶ 13 On the date the trial began, the court granted the State's motion to admit gang expert evidence and denied defendant's motion *in limine*. The State filed a "Notice on Possible 115-10.1 Offerings," which stated that the State intended to introduce statements given to defendant in discovery in the event that the State's witnesses provided inconsistent testimony at trial pursuant to section 10.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10.1(c)(1) (West 2014)) and Illinois Rules of Evidence 607 and 801(d)(1)(A)(1), (d)(1)(A)(2)(c), (d)(1)(B) (eff. Jan. 1, 2011). The parties agreed that if the State's witnesses gave testimony that was inconsistent with their prior statements, only the portion of the prior statements that were inconsistent would be admitted.

¶ 14 A jury trial was held. The State called Jeremy Coates as its first witness. Coates testified that he was at a party at KO Boxing Club in Joliet, Illinois, on July 8, 2011. He went to the party with Anthony Fearn, Shaq Williams, and Devonte Williams in a red van driven by Fearn. Fearn parked the van on a side street. The four men arrived at the party around midnight. Coates stated that between 1 to 1:20 a.m., the party "was shut down because I guess there was a rival gang thing." Coates stated that he had never been in a gang and he did not believe Fearn was in a gang.

¶ 15 Coates left the club with Fearn, Shaq, and Devonte. As they were leaving, Coates observed an individual standing on the corner. The individual said, "[w]e got a banger, whoever wants it can get it." Coates stated that "banger" is a slang term for "gun." A group of people then ran into the middle of the street and "they just started shooting." Coates and Fearn were on the driver's side of the van at the time of the shooting. Coates jumped into the van until the shooting stopped. He then exited the van and saw Fearn lying in the street. Coates approached Fearn and saw that Fearn had been shot. In the courtroom, Coates identified defendant as the shooter.

¶ 16 Coates was interviewed by the police the day after the shooting. Coates stated that the shooter was wearing Nike Air Force 1 sneakers and a white t-shirt with red writing or a red logo. An officer showed Coates a photographic lineup, and Coates identified an individual. Coates told the officer he was only "35 to 40 percent sure." Coates did not know the name of the person he identified. The person Coates identified in the photographic lineup was not defendant.

¶ 17 Approximately 14 months later, Coates met with the police a second time. Coates told the officers that he was giving a client a haircut, and his client showed him a photograph on Facebook of an individual named "Guru." Coates recognized Guru as the shooter. Coates did not know Guru's identity before seeing the photograph. The police showed Coates a second photographic lineup, and Coates identified defendant as the shooter.

¶ 18 Dr. Michel Humilier, the forensic pathologist who performed Fearn's autopsy, testified that it was his opinion that Fearn died of a gunshot wound to the arm. Police Officer Chris Delaney testified that he recovered five .380 caliber shell casings from the scene of the shooting on the evening of the incident. Delaney did not recover any live rounds.

¶ 19 Police Officer Edward Johnson testified that he was dispatched to the scene of the shooting. Johnson and another officer left the scene after receiving a dispatch about possible

suspects in another area. The officers encountered a group of four individuals: Lionell Smith, Makhi Jones, Brittani McElrath, and Lanita Faint. The officers did not locate any weapons on Smith or Jones. The officers did not pat down McElrath or Faint.

¶ 20 Officer T.J. Gruber testified that after the shooting, he came into contact with Smith, Jones, Sherman Adkins, Jerroll Amos, and Eric Ervins. The five men were in a group leaving the area of the shooting. Gruber patted down all five individuals and found no weapons. There may have been more people in the group, but Gruber only recorded the five men in his report.

¶ 21 McElrath testified that on the evening of the incident, she was at a house with Faint, Smith, and several other individuals. McElrath did not recall Jones being at the house. They learned of a party at the KO Boxing Club, so they walked to the party. The State asked McElrath if she recalled previously testifying that Jones was with them. McElrath stated she remembered being asked who was there, but did not recall saying Jones was there. The State read a portion of McElrath's grand jury testimony in which she stated Jones was with her and Faint when they went to the party. McElrath said she did not remember giving those answers and did not remember Jones being there.

¶ 22 Shortly after McElrath arrived at the KO Boxing Club, there was a shooting. Faint was near McElrath but she did not know where Smith and Jones were during the shooting. McElrath stated she knew defendant. Defendant's nickname was "Guru." At the time of the shooting, McElrath was in a romantic relationship with defendant. McElrath stated she did not remember where defendant was at the time of the shooting.

¶ 23 McElrath testified that she was standing on the sidewalk during the shooting, and the shooter was in the street. McElrath was not sure if she saw the individual in the courtroom who fired the shots. McElrath acknowledged that she saw defendant in the courtroom. McElrath

stated she did not remember which direction the shooter went after the shooting. McElrath stated that the area of the shooting was poorly lit.

¶ 24 The State then read a portion of McElrath's testimony given during grand jury proceedings. During her grand jury testimony, McElrath stated that she went to the party at the KO Boxing Club with Faint. When they arrived, McElrath had "seen everybody coming outside. And like they was just talking news, all the news talking stuff." McElrath saw defendant "pull out a gun and aim it across the street and start shooting." During her grand jury testimony, McElrath eventually admitted that defendant was part of the group that walked to the party with her and Faint. When the State asked her why she did not tell the grand jury earlier that defendant was in the group, McElrath replied: "Just all being scared and anything that you all know. Everybody out there is going to know it is going to come from me. And it is like it is different from when I am in here than out there. I have to deal with something so totally different."

¶ 25 During McElrath's grand jury testimony, she stated that the police showed her a photographic lineup that contained a photograph of defendant. McElrath did not identify defendant. McElrath explained: "Because one, I am still scared. I already got people coming at me with all kinds of sideways and all kinds of, I know this is about to make it worse."

¶ 26 At the trial, McElrath testified that she remembered saying she saw defendant pull out a gun and start shooting down the street. She did not remember many of the other statements she made during her grand jury testimony. McElrath stated she was not afraid to testify at the trial but was afraid of "the aftereffects." McElrath said that this fear was not affecting her memory of the night of the shooting.

¶ 27 McElrath acknowledged that hours after the shooting occurred, she told a police officer she did not know the identity of the shooter. McElrath also acknowledged that she had previously given several different versions of the shooting.

¶ 28 Christopher Beale testified that he was incarcerated in the Will County adult detention facility on charges that he delivered a substance he believed to be Ecstasy to an undercover police officer. In exchange for Beale's truthful testimony in the instant case, the State agreed to dismiss the charges against him. The State also agreed to relocate Beale, his four children, his children's mother, his mother, his two sisters, and his sisters' children to another State. The State agreed to provide funds for a moving van, a security deposit, and the first month's rent.

¶ 29 Beale testified that he was in a gang called Sqad Mafia. Sqad Mafia's main rivals were "P-Road, which was Patterson Road, the east side of Joliet, and also members from the hill as well." Beale was familiar with a group called Sic Made, who were members of the Gangster Disciples. Beale believed that Sic Made was "getting into it" with Sqad Mafia at the time of the shooting. Beale had known defendant for approximately 4½ years. Defendant was affiliated with Sqad Mafia. Defendant went by the "street names" Guru and Suwu.

¶ 30 On the evening of the incident, Beale was with Smith, Tyran Pruitte, and Jones. They were all members of Sqad Mafia. They learned of a party at the KO Boxing Club and decided to attend. Beale's sister drove them to the party. When they arrived, Beale saw rival gang members and did not see anyone he knew. Beale wanted to leave, but Smith wanted to stay. Beale left with his sister, and they drove to Beale's residence. When they arrived at the residence, defendant, Jones, Faint, Pruitte, and several others were already there. They told Beale that Smith needed help because some "East Side guys" at the party were trying to fight him. They all walked back to the party, which took approximately 15 minutes. When they arrived, Beale, Jones, and

defendant went into the KO Boxing Club. Beale spoke briefly to a member of a rival gang, and then everyone ran outside.

¶ 31 When Beale went outside, he saw Smith arguing with rival gang members. Beale was standing next to defendant and Jones. Defendant pulled out a gun and asked the others if he should shoot. Someone said yes. Defendant told Smith to get out of the way. Defendant tried to shoot the gun but it initially would not fire. A live round flew out of the gun. Defendant then fired the gun approximately four times toward a brown van. Beale, Jones, and Pruitte ran away.

¶ 32 Beale and the other individuals he was with walked back to Beale's residence. When they arrived, defendant was there. Defendant said he did not know what to do next, and he thought he might go to Mississippi. Defendant said he did not know what to do with the gun. Defendant then left. Defendant went by the nickname "Guru" at the time of the shooting. After the shooting, defendant went by the nickname "Suwu," which means blood.

¶ 33 Beale acknowledged that approximately three weeks after the shooting, he told police officers he did not know the identity of the shooter and he did not see defendant after the shooting. Beale stated he did not want to be labeled as a snitch. Approximately four years later in a recorded interview, Beale told a detective that the gun was a black .380 caliber Hi-Point.

¶ 34 Beale stated he had had dreadlocks for most of his life. Beale had dreadlocks on the evening of the shooting. Beale acknowledged that during the investigation of this case, someone said he was the shooter. Beale had gotten "kicked out" of Sqad Mafia because he snitched on another member of the gang.

¶ 35 Detective Sergeant Darrell Gavin testified that he was the sergeant in charge of the gang intelligence unit at the time of the incident. The gang intelligence unit assimilated and distributed gang information to police officers. The information collected by the unit included which

individuals were documented as gang members, their gang affiliation, and their daily activities. The unit maintained a gang database with this information. When police officers make contacts with people, they ask them whether they are gang members and, if so, what gang they belong to. The officers record that information on a card, which is then recorded in the gang database. Any subsequent interaction an officer has with a known gang member is also recorded in the database. The officers also gathered information regarding gang members' relatives, girlfriends, cars, and their friends and associates.

¶ 36 Gavin had received training regarding gang signs and tattoos. He had testified in three or four gang-related homicides. The State tendered Gavin as an expert witness in the field of gangs and gang intelligence, and the court accepted Gavin as an expert.

¶ 37 Gavin testified that Joliet had four major gangs: Vice Lords, Gangster Disciples, Latin Kings, and Two Six. Some of the gangs have different "sets" within them. These sets include "Sic Made, Sqad Mafia, [and] YC East Side." Sic Made and East Side were sets of the Gangster Disciples. Sqad Mafia was a set of the Vice Lords. Beale was a Vice Lord. Defendant was a Sqad Mafia Vice Lord. Gavin believed that Jones and Smith were also Sqad Mafia Vice Lords. At the time of the shooting, Sqad Mafia and Sic Made had an ongoing feud.

¶ 38 In gang culture, "snitching" meant talking to the police or testifying against another person. Gavin explained that snitching was "frowned upon, to say the least, and could cause that person some harm." "Banger" meant "gun."

¶ 39 Gavin testified that he was familiar with Fearn's murder. Fearn was not a gang member. However, the detectives working the case determined it was a gang-related shooting because witnesses told them defendant was shooting at a rival gang member or toward rival gang members.

¶ 40 Detective Shawn Filipiak testified that he was in charge of the investigation of the instant case. Approximately eight months after the incident, Filipiak spoke with defendant regarding the case—approximately eight months after the incident. Defendant was not a suspect at that time. Defendant told Filipiak that he did not know Fearn. Defendant said he did not go to a party at the KO Boxing Club on the night of the incident, and he did not know where he was on the date of the incident. Defendant told Filipiak he was in Sqad Mafia and that Sqad Mafia had a "beef" with Sic Made.

¶ 41 Filipiak interviewed Patrick Sawyer approximately one month after the shooting. A video recording was made of the interview which accurately depicted the conversation between them. Filipiak showed Sawyer a photographic lineup and Sawyer identified defendant.

¶ 42 Sawyer testified that he was at the KO Boxing Club on the night of the incident. Sawyer saw Beale at the KO Boxing Club. Sawyer and Beale got into an altercation because Beale was putting up gang signs. Beale was a Vice Lord, and Sawyer was a Sic Made Gangster Disciple.

¶ 43 When Sawyer left the party, he heard gunshots and ran away. Sawyer looked back as he was running and saw defendant standing outside the KO Boxing Club with Beale and a few of defendant's other friends. Sawyer believed that Beale, defendant, and the other individuals with them were Vice Lords. The State asked Sawyer if he saw defendant holding a weapon. Sawyer replied, "I am not sure about that anymore." Sawyer acknowledged that he was previously certain he saw defendant with a gun, but he was no longer certain. Sawyer tried to contact the State's Attorney on three or four occasions to tell them he was not sure he saw defendant with the gun. Sawyer explained: "I didn't want to not be a hundred percent sure and send somebody to prison for the rest of their life. I don't want to be held responsible for that and still don't want to be held responsible."

¶ 44 Sawyer acknowledged that he previously told the police he saw defendant with a gun. At that time, he was incarcerated on charges of aggravated unlawful use of a weapon (AUUW) and possession of narcotics. Sawyer was eventually convicted of those charges. The State showed Sawyer a photographic lineup. Sawyer acknowledged he had circled a photograph of defendant and written his initials.

¶ 45 The court allowed the State to publish the video recording of Filipiak's interview with Sawyer over defense counsel's objection. This video was not included with the record on appeal.

¶ 46 Sherman Adkins testified he was in custody on a different case and had prior felony convictions for drug possession and a "marijuana charge." The State did not offer Adkins anything in exchange for his testimony. Adkins had been a Vice Lord in the past, but had severed all ties with them. He suffered no consequences, and the Vice Lords had no animosity toward Adkins.

¶ 47 On the evening of the incident, Adkins was walking in his neighborhood. Adkins saw a group of people leave the "boxing arena." The group included defendant, Jones, and someone named "Bookie." Bookie's real name was Davell Mercer. Defendant was wearing a hooded sweatshirt. Adkins could not remember what Jones was wearing. Adkins did not believe defendant and Jones looked alike. Adkins heard someone yell "bust, bust, shoot, Guru shoot, whatever." Adkins then heard shots being fired. Adkins saw defendant raise a black pistol and start shooting. Adkins did not know exactly how many shots were fired but said there were a few. Adkins kneeled down until the shots ceased, and then he left.

¶ 48 A police officer stopped Adkins as he left the area, asking him if he had any knowledge of the shooting. Adkins told the officer "they just got done shooting around there. I don't know."

Adkins did not tell the officer who he saw shooting because Adkins "didn't want anything to do with it." Adkins did not tell the police what he had seen until 14 months after the incident.

¶ 49 The State rested. Defendant moved for a directed verdict, and the court denied defendant's motion.

¶ 50 Defendant called Brian Wright as a witness. Wright testified that he was a licensed barber, and he had been cutting defendant's hair since 2010. To Wright's knowledge, defendant had never had dreadlocks. Defendant typically kept his hair even all around, faded on the sides, or in a Mohawk. Wright was not certain what hairstyle defendant had at the time of the incident, but Wright was certain it was not dreadlocks.

¶ 51 Michelle Palaro testified that she was an investigator for the public defender's office. Palaro interviewed McElrath on July 17, 2013. McElrath told Palaro she could not remember the specifics of the shooting or where she was standing. McElrath told Palaro she did not know who fired the gun and she did not believe any of the individuals she was with had a gun.

¶ 52 Anissa Haymon testified that she was currently incarcerated in the county jail on a probation violation for felony retail theft. Haymon testified that she was at her sister's party at the KO Boxing Club on the evening of the incident. At some point, the party was shut down and everyone left. Haymon estimated there were over 100 people at the party.

¶ 53 When Haymon left the party, she saw approximately 10 people lingering at the vehicle parked next to hers. The group included Jones, Smith, and Beale. The three of them were yelling "[w]e gonna get them since they in the east side." Haymon explained that Jones, Smith, and Beale were in Sqad Mafia. Haymon saw Smith pull out a black handgun and pass it to Jones. Jones fired the gun. After the shooting, some of the group entered a vehicle and drove away, while the others ran. Haymon did not see defendant at the party. She did not know defendant.

¶ 54 On the day of the shooting, Haymon contacted the police because she wanted to tell them what she witnessed. Haymon identified Jones and Smith in photographic lineups. Haymon told the police that Jones was the shooter. Approximately one year later, Haymon told the police that Beale was the shooter. Haymon's aunt, who was also at the party, told Haymon she saw Beale fire the gun. Haymon explained:

> "Because when me and my auntie, we talked about it of course, and I was telling her my side of the story of what I seen, because everybody ducked but me. You know, I seen exactly what happened. And she said Chris Beale done ran up with a handgun as well, but I told her I seen [Jones] shoot the gun. I didn't see Chris Beale shoot the gun, so in my—she got in my head that Chris Beale shot, too, but it was only one gun that shot."

¶ 55 Haymon stated that she may have said at one point that Beale was the last person she saw holding the gun but she did not see who fired the gun.

¶ 56 Haymon identified Facebook photographs of her throwing gang signs. One photograph showed Haymon "throwing down" the Sqad Mafia sign, indicating disrespect. Another photograph showed Haymon "throwing" the Gangster Disciples sign up, indicating support for the Gangster Disciples.

¶ 57 Detective Tizoc Landeros testified that he spoke to McElrath on the date of the shooting. McElrath told Landeros she learned about the shooting from Facebook. Approximately one month later, Landeros served McElrath with a subpoena to attend a hearing. At that time, McElrath stated she had no memory of the night of the shooting. Landeros took McElrath to the scene to aid her recollection. Two days later, Landeros showed McElrath a photographic lineup

containing defendant. McElrath did not identify defendant and stated she had no recollection of the incident. Landeros asked McElrath to make a videotaped statement, but she refused.

¶ 58 Davell Mercer testified that his nickname was Bookie. Mercer did not attend the party at the KO Boxing Club on the night of the incident. He was incarcerated in the county jail that night.

¶ 59 Detective Filipiak testified that he interviewed Malery Taylor approximately one month after the incident. Filipiak showed Taylor photographic lineups containing photographs of defendant, Smith, Jones, and Beale. In one of the lineups, Taylor circled a picture of Beale. Taylor indicated the shooter had hair like Beale, but Beale was not the shooter. In another lineup, Taylor circled two pictures and said the shooter was either one or the other. One of the pictures she circled was of Jones and the other was of another individual. Taylor told Filipiak that Jones was not the shooter. In the photographic lineup containing a photograph of defendant, Taylor made no identification. Before he interviewed Taylor, Filipiak obtained a 911 tape on which Taylor said she could not see the shooter.

¶ 60 Filipiak stated that he was familiar with Jones at the time of the shooting because Jones was in a street gang and Filipiak had come into contact with him several times. Filipiak stated that Jones did not have dreadlocks at the time of the shooting.

¶ 61 Taylor testified that on the night of the incident, she was playing cards with her nephew in the living room of her third-floor apartment. Taylor heard many people arguing outside, and she went to the open window to watch. The area was poorly lit. Taylor saw a large group with two men fist fighting in the middle. She heard someone say “GD,” which means Gangster Disciples. One of the men who were fighting started to walk away. Then he stopped and pulled out a pistol and “started shooting at anyone and everyone.” There were two other men standing

with the shooter. The shooter had dreadlocks that ended between his ear and shoulder. Taylor could not see the shooter's face. The individual who was shot ran in front of Taylor's apartment building. He stood up and tried to obtain help from someone in a white vehicle. This individual pushed him away and yelled for someone to call the police. The individual then drove away.

¶ 62 Taylor called 911. The 911 tape was played for the jury. Taylor stated on the 911 tape that she did not know the identity of the shooter. Taylor testified that police officers came to her building the night of the shooting, but she did not want to talk to them. Taylor explained: "I'm not a snitch and I don't talk to the police like that." Taylor testified that she did not know the identity of the shooter and that she had never seen defendant before.

¶ 63 Taylor stated that she spoke with an officer about a month after the shooting. The officer showed Taylor several photographic lineups. Taylor indicated that one of the individuals had hair similar to the shooter but was not the shooter. Taylor indicated that the shooter's face was one of two photographs she saw. Taylor said she never saw the shooter's face and explained: "The only reason why I picked out those pictures [was] because the detective said I had to." Taylor stated that she did not know any of the people pictured in the lineups.

¶ 64 The parties stipulated as to the birth date, height, and weight of Jones. The defense rested.

¶ 65 The jury found defendant guilty of first degree murder and found that defendant personally discharged a firearm that proximately caused the death of another person.

¶ 66 Defendant filed a motion for judgment notwithstanding the verdict or, alternatively, motion for a new trial. The court denied the motion.

¶ 67 A presentence investigation report (PSI) was prepared. The PSI stated that defendant had prior convictions for unlawful use of a weapon (UUW) and AUUW. The PSI described the offenses as "Unlawful Use of Weapon/Person" and "Agg Unlawful Use Of Weapon/Vehicle."

The PSI indicated that both offenses were Class 4 felonies and that the convictions were entered in 2012. The PSI stated defendant was born in 1992 and had never been issued a Firearm Owner's Identification (FOID) card.

¶ 68 A sentencing hearing was held on October 28, 2015. Detective Gavin testified regarding defendant's gang involvement. Gavin testified that defendant was a member of Sqad Mafia, which was a faction of the Vice Lords. Gavin identified a photograph posted on defendant's Facebook page in which defendant was "throwing up Sqad Mafia's hand signal." The State introduced a post from defendant's Facebook page dated November 16, 2010, which said: "SQAD UP." Gavin testified that "sqad up" meant that defendant was praising his gang. Another post, dated September 11, 2010, stated: "Sht chill waitn for one of dez fuck niggas ta make da wrong move so I can checkmate day ass SQAD UP BITCH NIGGAS!!!!"

¶ 69 Gavin testified that, approximately nine months before the shooting in the instant case, defendant and other Sqad Mafia members encountered Sic Made members at a basketball game. Later that night, "defendant's house was shot up in regards to that meet." Defendant's younger brother was killed. Gavin opined that defendant was the target of that shooting.

¶ 70 The State submitted two victim impact statements written by Fearn's grandfather and a family friend.

¶ 71 Defendant called his grandmother, his mentor, and his mother as character witnesses. Defendant also submitted letters from his friends and family members. Defendant gave a statement in allocution, saying that he was sorry to Fearn's family for their loss. However, defendant maintained that he did not shoot Fearn.

¶ 72 During argument, the State argued as follows:

"In 2010, [defendant] is publicly gangbanging on Facebook. *** That gangbanging led to his brother getting killed. His brother who he apparently loved very much, his family loved. He was younger than him. That got him killed and it didn't stop him.

That same gangbanging continued on six months after his brother's death, led to him randomly shooting down a street occupied by people for absolutely no reason just to yell out: Sqad up. And shoot one of them, get one of them, and the testimony pointed that out at trial. Shot down an occupied street at night filled with people for no reason other than gangbanging.

After that, Judge, he wasn't arrested right away. In 2012, he was caught on January 1st with a gun. Both of these cases are in his PSI. He was stopped as a passenger in a vehicle. He jumped out of that vehicle. He ran down the street. He ran from the cops and he threw a gun. He was arrested on that. That didn't stop him. He was released on bond. Within a few months, another traffic stop, another running down the street by this Defendant to get away from cops, and another throwing of a gun as he ran.

He was convicted on both of those offenses. He was sentenced to the Department of Corrections."

¶ 73 The court asked the State if it wanted the court to consider as a factor in aggravation that the offense was related to the activities of an organized gang. The State answered in the affirmative.

¶ 74 The court sentenced defendant to 57 years' imprisonment. The court stated that it had considered the statutory factors in aggravation and mitigation. The sentencing order showed that

defendant was convicted under section 9-1(a)(2) of the Criminal Code of 1961 (720 ILCS 5/9-1(a)(2) (West 2010)). Defendant filed a motion to reconsider sentence, arguing that his sentence was excessive. The court denied defendant's motion. The court reasoned that the sentence was appropriate given the factors in aggravation and mitigation, the nature and circumstances of the offense, and defendant's two previous convictions involving a firearm.

¶ 75 ANALYSIS

¶ 76 I. Right to Counsel

¶ 77 Defendant first argues that the trial court violated his sixth amendment right to counsel of choice when it refused to allow private counsel (Lewin) a continuance approximately one week before trial so Lewin could familiarize himself with the facts of the case. Viewing the facts that defendant had not attempted to previously attain private counsel and also stated he was satisfied with his public defenders in conjunction with the facts that the case had been pending for over two years and continued numerous times at the request of defendant, we find the court did not abuse its discretion in denying Lewin's motion for a continuance.

¶ 78 "The right to retained counsel of one's choice 'has been regarded as the root meaning of the constitutional guarantee' in the sixth amendment." *People v. Tucker*, 382 Ill. App. 3d 916, 919 (2008) (quoting *United States v. Gonzalez–Lopez*, 548 U.S. 140, 147-48 (2006)). However, "[a] defendant who abuses the sixth amendment in an attempt to delay trial and thwart the effective administration of justice may forfeit his right to counsel of choice." *Id*. at 920. "In balancing the judicial interest of trying the case with due diligence and the defendant's constitutional right to counsel of choice, the court must inquire into the actual request to determine whether it is being used merely as a delaying tactic." *People v. Burrell*, 228 Ill. App. 3d 133, 142 (1992).

> "Factors to be considered include: whether defendant articulates an acceptable reason for desiring new counsel; whether the defendant has continuously been in custody; whether he has informed the trial court of his efforts to obtain counsel; whether he has cooperated with current counsel; and the length of time defendant has been represented by current counsel." *Tucker*, 382 Ill. App. 3d at 920.

¶ 79 "It is within the trial court's discretion to determine whether the defendant's right to selection of counsel unduly interferes with the orderly process of judicial administration." *Id.* "The denial of a motion for continuance to obtain new counsel is not an abuse of discretion if new counsel is not specifically identified or does not stand ready, willing, and able to make an unconditional entry of appearance *instanter*." *Burrell*, 228 Ill. App. 3d at 142.

¶ 80 We find the decision in *People v. Curry*, 2013 IL App (4th) 120724, to be instructive. The *Curry* defendant moved for a continuance on the day of trial to obtain new counsel. The defendant's counsel advised the court that the defendant paid a new attorney a retainer the week before and that the new attorney conditioned his employment upon the defendant obtaining a continuance because the new attorney had a scheduling conflict on the date of the trial. *Id.* ¶ 12. The trial court denied the motion as untimely. *Id.* ¶ 15. On appeal, the court found that the trial court did not abuse its discretion in denying the defendant's motion for a continuance. *Id.* ¶ 52. The *Curry* court reasoned that the new attorney's appearance was conditioned on the defendant obtaining a continuance, the new attorney was not " 'ready, willing, and able to make an *unconditional* entry of appearance on defendant's behalf.' " (Emphasis in original.) *Id.* (quoting *People v. Childress*, 276 Ill. App. 3d 402, 411 (1995)).

¶ 81 Like in *Curry*, defendant's new counsel did not stand ready, willing, and able to make an unconditional entry of appearance. Rather, Lewin filed a motion to continue stating that he knew

nothing about the facts of the case and needed a continuance to prepare for trial. The only explanation Lewin gave for defendant's decision to hire him at that late hour was that defendant talked to his parents and decided he wanted Lewin's services. At the time Lewin filed his motion for a continuance, the case had been pending for over two years and the trial date had been set for approximately four months. The case had been continued numerous times at the request of defendant due to a lengthy discovery process and difficulty contacting defense witnesses.

¶ 82 Additionally, the record did not indicate that defendant had tried to seek private counsel prior to Lewin's appearance or was impeded from seeking private counsel prior to the week before trial. Defendant did not indicate that he was dissatisfied with his public defenders prior to the hearing on Lewin's motion except for his disagreement with his public defenders' motion for a continuance to review jail phone call recordings. However, hiring a new attorney so late in the process would have delayed the proceedings even further. We also note that when the court questioned defendant after denying Lewin's motion for a continuance, defendant stated he was satisfied with his public defenders. Under these circumstances, we find the court did not abuse its discretion in denying Lewin's motion for a continuance.

¶ 83 In coming to this conclusion, we reject defendant's reliance on *People v. Bingham*, 364 Ill. App. 3d 642 (2006), and *People v. Washington*, 195 Ill. App. 3d 520 (1990). The *Bingham* court held that the trial court erred in denying the defendant's motion for a continuance to substitute counsel—which was filed on the date of trial—without further inquiry. *Bingham*, 364 Ill. App. 3d at 645. The *Bingham* court reasoned that the case had progressed quickly and had only been pending for three months, no prior continuances had been requested, and no pretrial motions had been filed. *Id*. The record did not indicate that the defendant made any prior

attempts to delay the proceedings or that the purpose of the motion for continuance was dilatory. *Id*.

¶ 84 Similarly, in *Washington*, the defendant, who had been represented by the public defender, moved for a continuance on the date of trial because his family retained another attorney who wanted a seven-day continuance. *Washington*, 195 Ill. App. 3d at 522. At that time, the case had been pending for approximately four months. *Id*. The case had been continued several times on motions of the court or by agreement of the parties. *Id*. The public defender advised the trial court that the defendant's family had given him the name of the new attorney. *Id*. The trial court denied the motion to continue, reasoning: "No one has filed an appearance. This is just some statement that somebody wants something continued." *Id*. The matter proceeded to a bench trial where the only evidence was the live testimony of one witness and the stipulated testimony of another witness. *Id.* at 523.

¶ 85 On appeal, the *Washington* court found that the trial court erred in denying the defendant's motion for a continuance. *Id*. at 527. The *Washington* court reasoned that it was unlikely that the continuance was merely a delaying tactic given that the requested continuance was only seven days. *Id.* at 525. The *Washington* court found that the trial court should have inquired further into the employment of the new attorney if it believed the defendant was using the continuance merely as a delaying tactic. *Id*. at 526. The court also noted the defendant had made no prior attempts to delay the proceedings and the trial was a brief bench trial. *Id*. at 525.

¶ 86 Here, unlike in *Bingham* and *Washington*, the case had been pending for over two years, the case had been continued many times, extensive discovery had been conducted, and both parties had filed pretrial motions. The trial date was set approximately four months before defendant attempted to retain new counsel. Unlike the brief bench trial in *Washington*,

defendant's jury trial lasted for four days, over 20 witnesses testified, and multiple stipulations were entered into evidence. Given the extensive discovery and number of witnesses in the case, it would have taken a new attorney substantially longer to prepare for trial than the seven-day request in *Washington*. On June 15—approximately one week before the date of trial—Lewin's motion stated that he knew nothing about the facts of the case. In light of these facts, we find *Bingham* and *Washington* distinguishable.

¶ 87 II. Prior Inconsistent Statements

¶ 88 Defendant next argues that McElrath's grand jury testimony and Sawyer's videotaped interview were improperly admitted as substantive evidence on the basis that they were prior inconsistent statements. Specifically, defendant argues that these statements were not substantively admissible because the witnesses did not acknowledge the prior inconsistent statements as required by section 115-10.1(c)(2)(B) of the Code (725 ILCS 5/115-10.1(c)(2)(B) (West 2014)).

¶ 89 Initially, we find that this argument was forfeited because defendant failed to raise the issue in a posttrial motion. *People v. Johnson*, 238 Ill. 2d 478, 484 (2010) ("When, as here, a defendant fails to object to an error at trial and include the error in a posttrial motion, he forfeits ordinary appellate review of that error.").

¶ 90 Additionally, we find defendant's argument fails on its merits because neither McElrath's grand jury testimony nor Sawyer's videotaped interview were subject to the acknowledgement requirement. Section 115-10.1 of the Code provides:

> "In all criminal cases, evidence of a statement made by a witness is not made inadmissible by the hearsay rule if

(a) the statement is inconsistent with his testimony at the hearing or trial, *and*

(b) the witness is subject to cross-examination concerning the statement, *and*

(c) the statement—

(1) was made under oath at a trial, hearing, or other proceeding, *or*

(2) narrates, describes, or explains an event or condition of which the witness had personal knowledge, *and*

(A) the statement is proved to have been written or signed by the witness, *or*

(B) the witness acknowledged under oath the making of the statement either in his testimony at the hearing or trial in which the admission into evidence of the prior statement is being sought, or at a trial, hearing, or other proceeding, *or*

(C) the statement is proved to have been accurately recorded by a tape recorder, videotape recording, or any other similar electronic means of sound recording." (Emphases added.) 725 ILCS 5/115-10.1 (West 2014);

See also Ill. R. Evid. 801(d)(1) (eff. Jan. 1, 2011).

¶ 91 Under the plain language of section 115-10.1(c)(2), a statement that "narrates, describes, or explains an event or condition of which the witness had personal knowledge" is admissible if one of three alternative grounds is present. 725 ILCS 5/115-10.1(c)(2) (West 2014). First, under section 115-10.1(c)(2)(A), such a statement is admissible if it "is proved to have been written or

signed by the witness." 725 ILCS 5/115-10.1(c)(2)(A) (West 2014). Alternatively, under section 115-10.1(c)(2)(B), such statement is admissible if the witness acknowledges having made the statement while under oath (the acknowledgement requirement). 725 ILCS 5/115-10.1(c)(2)(B) (West 2014). Under section 115-10.1(c)(2)(C), such a statement is admissible if "the statement is proved to have been accurately recorded by a tape recorder, videotape recording, or any other similar electronic means." 725 ILCS 5/115-10.1(c)(2)(C) (West 2014). Sawyer's videotaped interview was admissible under section 115-10.1(c)(2)(C), as the statement was video recorded. Because section 115-10.1(c)(2)(C) is an alternative ground to the acknowledgement requirement, the acknowledgement requirement was not implicated in the admissibility of the video-recorded interview.

¶ 92 McElrath's grand jury testimony was admissible under section 115-10.1(c)(1), which provides for the admissibility of statements "made under oath at a trial, hearing, or other proceeding." 725 ILCS 5/115-10.1(c)(1) (West 2014). Section 115-10.1(c)(1) and section 115-10.1(c)(2) provide alternative grounds for a statement's admissibility. Thus, since McElrath's grand jury testimony was admissible under section 115-10.1(c)(1), none of the three alternative grounds for admissibility in section 115-10.1(c)(2)—including the acknowledgment requirement—were implicated.

¶ 93 We also reject defendant's conclusory argument that the use of a portion of McElrath's grand jury statements was improper because the statements "went well beyond the testimony required to refresh the witness' memory." The amount of testimony needed to refresh McElrath's memory was immaterial because the statements were not admitted for the purpose of refreshing recollection. Rather, the statements were introduced as prior inconsistent statements. Moreover, this issue was forfeited because defense counsel failed to object to the introduction of McElrath's

grand jury testimony and did not raise the issue in a posttrial motion. See *Johnson*, 238 Ill. 2d at 484.

¶ 94 III. Sufficiency of the Evidence

¶ 95 Defendant next argues that the evidence was insufficient to prove him guilty beyond a reasonable doubt of first degree murder. We find that the evidence, when viewed in the light most favorable to the prosecution, was sufficient for a rational jury to find defendant guilty beyond a reasonable doubt.

¶ 96 "When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant." *People v. Collins*, 106 Ill. 2d 237, 261 (1985). Rather, " 'the relevant question is 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.' " (Emphasis in original.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Id.*

¶ 97 Where, as in the instant case, "the finding of guilt depends on eyewitness testimony, a reviewing court must decide whether, in light of the record, a fact finder could reasonably accept the testimony as true beyond a reasonable doubt." *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). "The reviewing court must carefully examine the record evidence while bearing in mind that it was the fact finder who saw and heard the witness." *Id.* at 280. A reviewing court may find eyewitness testimony insufficient, "but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *Id.* "[T]he fact finder's decision to accept testimony is entitled to great deference." *Id.* However, it "is not conclusive and does not bind the reviewing court." *Id.*

¶ 98 To prove defendant guilty of first degree murder, the State was required to establish that defendant (1) performed acts which caused the death of another individual and (2) knew that "such acts create[d] a strong probability of death or great bodily harm to that individual or another." 720 ILCS 5/9-1(a)(2) (West 2010).

¶ 99 At trial, Dr. Humilier testified that Fearn's cause of death was a gunshot wound. Coates stated that he was with Fearn outside the KO Boxing Club just before the shooting. Coates saw someone take a gun and start shooting, and he hid in a van. After the shooting was over, Coates saw that Fearn had been shot. Coates later saw a photograph of defendant on Facebook and recognized him as the shooter. Beale testified that he saw defendant fire the gun on the evening of the incident. Afterward, defendant told Beale he did not know what to do with the gun and that he might move to another state. Adkins also testified that he saw defendant fire the gun on the evening of the incident. Sawyer testified that although he was no longer certain who fired the gun, he previously was certain it was defendant. During McElrath's grand jury testimony, she stated that she saw defendant fire the gun. This evidence, when viewed in the light most favorable to the prosecution, sufficiently established beyond a reasonable doubt that defendant committed the first degree murder of Fearn.

¶ 100 In coming to this conclusion, we reject defendant's attempt to challenge the credibility of Coates, McElrath, Beale, Sawyer, and Adkins here on appeal. Specifically, defendant argues that the testimony of these witnesses was unreliable because Coates did not identify defendant as the shooter until over a year after the shooting, McElrath gave several different versions of what she saw on the evening of the incident, and Sawyer was not certain defendant was the shooter. Defendant contends that Beale's testimony was untrustworthy because of his deal with the State and because he initially did not identify defendant as the shooter. Defendant argues that Adkins'

testimony was not credible because he stated that Mercer was with defendant and Jones on the night of the shooting when he was actually incarcerated. Defendant also notes that Adkins was a convicted felon.

¶ 101 Despite the above inconsistencies, the record does not "compel[] the conclusion that no reasonable person could accept [the eyewitness testimony] beyond a reasonable doubt." *Cunningham*, 212 Ill. 2d at 280. The jury could have reasonably believed that Coates' delay in identifying defendant as the shooter was due to the fact that he did not know who defendant was before seeing a photograph of him on Facebook. The jury observed Beale's demeanor while testifying and may have reasonably found his testimony to be credible despite his deal with the State. The jury could have reasonably believed that McElrath gave varying versions of the evening in question out of fear based on statements she made during her grand jury testimony. The jury could have accepted that Adkins saw defendant shoot the gun despite his felon status and misidentification of Mercer, especially in light of the testimony of other witnesses. "[I]t is for the jury to weigh the credibility of the witnesses and to resolve conflicts or inconsistencies in their testimony." *People v. Frieberg*, 147 Ill. 2d 326, 360 (1992).

¶ 102 We also reject defendant's argument that the trier of fact did not properly weigh the evidence in this case in light of the evidence that defendant did not have dreadlocks at the time of the shooting. The only evidence that the shooter had dreadlocks was Taylor's testimony. However, Taylor observed the shooting from the window of her third-story apartment, described the area as dimly lit, and stated she did not see the shooter's face. The jury could have reasonably accepted the testimony of the State's witnesses who testified that they saw defendant fire the gun over Taylor's more vague testimony that the shooter had dreadlocks.

¶ 103 IV. Sentencing

¶ 104 Defendant argues: (1) that his prior convictions for UUW and AUUW were improperly used in aggravation at sentencing because the convictions were based on unconstitutional statutes, and (2) the trial court improperly considered that defendant committed an offense related to the activity of an organized gang. We address each argument in turn.

¶ 105 A. Prior Convictions

¶ 106 Defendant contends that it was improper for the court to consider in aggravation his prior convictions for UUW and AUUW because they were based on unconstitutional statutes. In support of his position, defendant cites our supreme court's decision in *People v. Aguilar*, 2013 IL 112116, ¶ 20, which held that section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2008)) was unconstitutional.

¶ 107 We find this issue is controlled by our supreme court's decision in *People v. McFadden*, 2016 IL 117424. In *McFadden*, the defendant argued that the trial court improperly considered his prior conviction for AUUW as an aggravating factor because the AUUW conviction was based on an unconstitutional statute. *Id*. ¶ 40. In rejecting the defendant's argument, the court found the record in that case did not show the defendant's prior AUUW conviction was constitutionally invalid because it was unclear whether the defendant was convicted under the section of the AUUW statute held to be unconstitutional in *Aguilar*. *Id*. ¶¶ 31-33, 41.

¶ 108 Here, like in *McFadden*, the record does not establish the unconstitutionality of defendant's AUUW conviction. The PSI described the AUUW conviction as "Agg Unlawful Use Of Weapon/Vehicle," indicated that it was a Class 4 felony, and stated that the conviction was entered in 2012. The State provided an additional description of the facts underlying the offense at the sentencing hearing when it stated:

> "In 2012, he was caught on January 1st with a gun. Both of these cases are in his PSI. He was stopped as a passenger in a vehicle. He jumped out of that vehicle. He ran down the street. He ran from the cops and he threw a gun. He was arrested on that. That didn't stop him. He was released on bond. Within a few months, another traffic stop, another running down the street by this Defendant to get away from cops, and another throwing of a gun as he ran."

¶ 109 Neither the PSI nor the State's description of the incidents indicates under which subsection of the AUUW statute defendant was convicted. Additionally, the PSI indicates defendant was under the age of 21 at the time of his prior convictions, and he was never issued a FOID card. Possessing a firearm under either of these circumstances can support a constitutionally valid conviction for AUUW. 720 ILCS 5/24-1.6(a)(3)(C), (a)(3)(I) (West 2010); *People v. Mosley*, 2015 IL 115872, ¶ 38 ("[W]e conclude that, under the *Wilson* approach, neither subsection (a)(3)(C), nor subsection (a)(3)(I) violates the second amendment rights of defendant or other 18- to 20-year-old persons.").

¶ 110 Regarding defendant's prior UUW conviction, the PSI merely states that the conviction was for the offense of "Unlawful Use of Weapon/Person," was entered in 2012, and was a Class 4 felony. Additionally, the State described the offense as involving defendant running from a vehicle and tossing a gun as he ran. Defendant makes no argument as to which subsection of the UUW statute served as the basis of his conviction and cites no authority regarding the unconstitutionality of the UUW statute. Accordingly, defendant has failed to show that this conviction was constitutionally invalid.

¶ 111 In coming to this conclusion, we reject defendant's reliance on *People v. Smith*, 2016 IL App (2d) 130997, ¶ 19, in which the court found the trial court erred in considering the

defendant's AUUW conviction in aggravation at sentencing. In *Smith*, it was undisputed that the defendant's prior conviction for AUUW was for a violation of section 24-1.6(a)(1), (a)(3)(A) of the AUUW statute (720 ILCS 5/24-1.6(a)(1), (a)(3)(A) (West 2002)). *Id.* ¶ 1. The supreme court had previously held that section of the AUUW statute was unconstitutional in *Aguilar*, 2013 IL 112116, ¶ 20, and *People v. Burns*, 2015 IL 117387, ¶ 22. In the instant case, however, the record does not establish that defendant's prior convictions were entered under sections of the UUW and AUUW statutes that have been held to be unconstitutional.

¶ 112 B. Offense Related to Gang Activities

¶ 113 Defendant also argues that the court erred in considering in aggravation that defendant committed an offense related to the activities of an organized gang. Defendant contends that the record does not establish that he actively participated in a gang.

¶ 114 Section 5-5-3.2(a)(15) of the Unified Code of Corrections (730 ILCS 5/5-5-3.2(a)(15) (West 2014)) provides that the court may consider as a factor in aggravation that "the defendant committed an offense related to the activities of an organized gang." See also *People v. Spears*, 256 Ill. App. 3d 374, 382 (1993) ("In Illinois, gang affiliation is but one of the factors a judge may consider when sentencing.").

¶ 115 In the instant case, there was ample evidence that defendant was a member of a gang and "committed an offense related to the activities of an organized gang." 730 ILCS 5/5-5-3.2(a)(15) (West 2014)). At the sentencing hearing, the State introduced evidence of defendant's gang involvement through Gavin's testimony and posts from defendant's Facebook page. At trial, Filipiak testified that defendant told him that defendant was a member of Sqad Mafia. Gavin testified that the Vice Lords and the Gangster Disciples were gangs in Joliet. Gavin further testified that Sqad Mafia was a faction of the Vice Lords. Gavin stated that defendant, Jones, and

Smith were Sqad Mafia Vice Lords. Gavin said that Beale was also a Vice Lord. Haymon, Sawyer, and Beale also testified that defendant was a member of Sqad Mafia. Beale testified that he used to be in Sqad Mafia, but got kicked out for snitching on another gang member. Beale testified that on the night of the incident, he and defendant went to the party at the KO Boxing Club to help Smith because rival gang members were trying to fight him. Beale stated that Smith was arguing with rival gang members just before defendant fired the gun. Additionally, Taylor testified that she heard someone say "GD" before the shooting, which means "Gangster Disciple."

¶ 116 Given the above evidence, it was not improper for the court to consider in aggravation that "the defendant committed an offense related to the activities of an organized gang." 730 ILCS 5/5-5-3.2(a)(15) (West 2014).

¶ 117 CONCLUSION

¶ 118 For the above reasons, the judgment of the trial court is affirmed.

¶ 119 Affirmed.