2018 IL App (2d) 160372-U
No. 2-16-0372
Order filed December 19, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. BRANDON LENEAR JONES, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 13-CF-2463 Honorable Daniel Patrick Guerin, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: The lineup in which defendant was identified by a witness was not suggestive; the completeness doctrine exception to the hearsay rule did not require that defendant's initial police interviews be admitted after the State introduced evidence of his last interview; defendant forfeited his argument regarding the racial composition of the jury, and he also otherwise failed to show that it did not represent a fair cross-section of the community; and the trial court acted within its discretion in sentencing defendant to 18 years' imprisonment. Therefore, we affirmed.

¶ 2 Following a jury trial, defendant, Brandon Lenear Jones, was convicted of armed robbery with pepper spray (720 ILCS 5/18-2(a)(1) (West 2012)) and armed violence (720 ILCS 5/33A-2(a) (West 2012)) and sentenced to 18 years' imprisonment. On appeal, he argues that: (1) the

State violated his due process rights by creating a suggestive lineup wherein he was the only individual without a blue armband; (2) under the completeness doctrine, portions of his interviews with police should not have been excluded from evidence; (3) he was denied a fair trial because the jury contained no African Americans; and (4) his prison sentence is excessive. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 9, 2014, defendant was charged by indictment with five offenses allegedly committed on December 11, 2013, with co-defendants Carlos Brown and B.L. Jones.[1] The incident involved the robbery of a Radio Shack, during which employee Michael Goetschel and customer Linda McDougle were pepper sprayed. Defendant was alleged to have committed armed robbery (720 ILCS 5/18-2(a)(1) (West 2012)) by taking cell phones and keys from Goetschel by the use of force or by threatening imminent use of force, while being armed with pepper spray. Defendant was charged with two counts of aggravated battery (720 ILCS 5/12-3.05(a)(1) (West 2012)). The first count alleged that, while committing a battery to Goetschel, defendant knowingly caused great bodily harm by pepper-spraying him in the head and face. The second count alleged the same regarding McDougle. Defendant was charged with armed violence (720 ILCS 5/33A-2(a) (West 2012)) for, while being armed with a dangerous weapon, committing the offense of intimidation by ordering Goetschel to unlock a cabinet containing cell phones while threatening physical harm to him and pointing a firearm at him. Last, defendant was charged with aggravated kidnapping (720 ILCS 5/10-1(a)(2) (West 2012)) for being armed with a firearm while secretly confining Goetschel against his will.

[1] B.L. Jones is defendant's brother.

¶ 5 On November 18, 2014, defendant filed various motions to suppress, including a motion to suppress evidence from a live lineup identification. He later filed an amended motion and a second amended motion to suppress this evidence. He alleged that the lineup procedure was suggestive and improper based on the positioning of lineup participants by the police.

¶ 6 A hearing on the motion took place on November 6 and 18, 2015. Detective Robert Bylls testified that he participated in running the lineup at issue on December 12, 2013. In accordance with standard procedures, defendant was allowed to pick his own position in the lineup, and he chose position "three," which was the middle position. The witnesses were brought in individually to view the lineup. Goetschel and McDougle did not make any identifications, but a witness named Renee Cantalupo identified defendant. On redirect examination, defense counsel raised the issue of "blue bands" that all individuals other than defendant were wearing in the lineup. Detective Bylls testified that the jail used the bands for inmate identification purposes.

¶ 7 Cantalupo testified that the police told her to let them know if she recognized anyone in the lineup from Radio Shack, but that there was no pressure. When asked about wristbands, Cantalupo testified that she did not look below anyone's face. She testified that she asked for the participants to move closer to the glass so she could view their heights and faces more closely. Cantalupo was pretty certain that defendant was the person she saw near Radio Shack, but she asked for the men to step closer because she "wanted to make [it] a hundred percent certain in [her] head."

¶ 8 Defendant counsel argued that the lineup was suggestive because defendant "was placed in the center" which was "the focal point of any lineup," and because he "did not have a band on his arm."

¶ 9 The trial court granted the State's motion for a directed finding and denied the motion to suppress the identification. It noted that the lineup participants appeared reasonably close in age and appearance. Defendant was in the middle position because he chose to be there, and there was nothing impermissibly suggestive about him being in the middle. A picture of the lineup showed that the individuals other than defendant had on blue wristbands, but they did not stand out, and the trial court did not "know that that would be obvious to anybody, that he did not have one versus the others having one." It did not rise to the level of misidentification. Further, Cantalupo indicated that she did not notice the wristbands and was not looking at the participants' arms. She testified that she asked them to step closer so she could see their faces better.

¶ 10 On January 13, 2016, the State filed several motions *in limine*. Relevant to this appeal, one motion sought to bar admission of defendant's "self-serving" statements made after his arrest. The motion stated that defendant was interviewed three times on December 11, 2013, and once on December 12, 2013. The State sought to preclude defendant from introducing into evidence his denial of the offense to law enforcement in the first three interviews. The trial court granted the motion on January 21, 2016, though it stated that the defense could elicit testimony that there were a series of interviews and the circumstances of those interviews.

¶ 11 The jury trial commenced on January 25, 2016. Before beginning *voir dire*, defense counsel moved to strike the jury pool because there was not "a single black in the jury that was sent to us," so it was not "a jury of [defendant's] peers." The State argued that defendant had not made any showing that the potential jurors were discriminatory. The trial court denied the motion to strike.

¶ 12 We summarize the evidence presented by the State. On December 9, 2013, defendant purchased pepper spray at a Meijer in Bolingbrook. He was accompanied by B.L. and Brown.

¶ 13 The following day, on December 10, 2013, B.L. entered the RadioShack in Downers Grove shortly before closing. He asked the employee working there, assistant manager Goetschel, whether the store had iPads. Goetschel said that the store did not carry iPads but that they could be ordered online. B.L. left without purchasing anything. The next morning, he returned to the store, this time asking Goetschel whether the store had iPhones in stock. Goetschel said that they did and that the store could also get them serviced. B.L. again left without making any purchases.

¶ 14 Shortly afterwards, two African American men came into the store wearing dark hoodies and gloves. One of the men had a black revolver. That man pointed the gun at Goetschel and ordered him to go to the employee's bathroom at the back of the store. Goetschel was ordered to kneel down and give up the keys to the "cage," which was a locked area where the store kept more expensive inventory. At some point, the men also took Goetschel's phone and personal keys. The men were unable to open the cage and made Goetschel do it. They put about 15 phones in a small garbage can that was in the store. The man without the gun told the other man to "pop [Goetschel's] ass" two or three times, which made Goetschel even more frightened. One of the men subsequently pepper-sprayed him in the face. Goetschel later dialed 911.

¶ 15 In the meantime, the men entered the sales room and encountered McDougle, a customer who had entered the store. They pepper-sprayed her in the face as well before leaving. Cantalupo was in the shopping plaza and saw two young black men walking towards her, holding a trash can between them. She made eye contact with one of them and smiled as she walked past. McDougle exited the store and saw Cantalupo coming in her direction. McDougle

said that the store had been robbed and asked Cantalupo to call the police. Cantalupo ran to a location where she thought the men would be driving and saw a green Nissan with three people. She briefly tried to follow the vehicle in her car, but then she returned to Radio Shack and talked to the police.

¶ 16 A police officer spotted a green Nissan Altima containing three black males about one mile west of the Radio Shack. The officer was later joined by two other squad cars, and they activated their lights, prompting the car to stop on the shoulder of Interstate 88. However, before an officer could approach the car, the Altima drove off. Officers followed the vehicle without using their lights and sirens. Occupants of the Altima threw some clothing on the roadway, specifically a couple of sweatshirts, a scarf, and a hat, which the police retrieved.

¶ 17 The Altima eventually stopped in front of a gated retirement home in Naperville. B.L. remained in the car while the two other men, Brown and defendant, ran. The officers found defendant in a building under construction, standing between studs. Defendant was arrested and transported to the police station. The police searched the car and found a garbage can in the trunk with 15 cell phones. The car also contained a can of pepper spray, black gloves, Goetschel's keys, Goetschel's phone, and a piece of mail with defendant's name on it.

¶ 18 On December 12, 2013, the police found a loaded gun with a broken cylinder on the side of the highway, about half a mile from where the clothing was found. Also on December 12, 2013, Cantalupo identified defendant in a lineup. See *supra* ¶ 7. Goetschel identified B.L. as the man who had entered the store twice before the robbery. He knew B.L. was not the man who held the gun because that man had different eyes. Goetschel identified the gun in court as substantially similar to the one used in the robbery. He also identified the clothing worn by the perpetrators. DNA from two of these items, a sweatshirt and hat, matched defendant's DNA.

¶ 19 Defendant was interviewed three times on December 11, 2013. He was interviewed a fourth time during the evening of December 12, 2013. During that interview, he said that B.L. went inside the Radio Shack to ask about a phone, and B.L. then returned to the back seat of the car. He said that he and Brown next went inside the store and took some phones. He said that Brown held the gun when they walked in, but Brown handed him the gun while Brown gathered the phones. Defendant pointed the gun at Goetschel, and Brown told him to "pop his ass." Defendant claimed that they were trying to scare Goetschel but were not intending to hurt anyone. Defendant also claimed that Brown pepper sprayed Goetschel and McDougle. Defendant admitted driving the Altima.

¶ 20 Brown testified that he had known defendant for about 10 years. Defendant drove him and B.L. to the Radio Shack on December 11, 2013. He and defendant entered the store, with defendant carrying the gun. Brown described the events of the robbery consistent with Goetschel's testimony. Brown testified that when they left, defendant pepper sprayed McDougle. Defendant drove the Altima, Brown sat in the front passenger seat, and B.L. remained in the back seat. Defendant later threw clothes out the window, and Brown threw the gun out of the car. Brown had entered a deal with the State in which he pled guilty to armed robbery with a dangerous weapon with a reduced sentence, though there was not an agreement on the exact sentence. He was sentenced to "18 years at 50 percent."

¶ 21 Brown admitted that once he was taken into custody, he and B.L. were together in a jail cell for about three hours, away from defendant. They decided how they were going to present their story to the police, which included putting "all of the liability on" defendant. He and B.L. agreed that they would say that defendant held the gun. Still, Brown told the detectives that he

committed the robbery with defendant in the store, that he (Brown) put the cell phones in the garbage can, and that he (Brown) pepper sprayed McDougle.

¶ 22 At the end of the State's case-in-chief, defendant moved for a directed verdict. The trial court denied the motion. However, after both sides rested and defendant renewed the motion, the trial court granted the motion in part and dismissed the aggravated battery counts. It reasoned that the effects of pepper spray did not amount to great bodily harm.

¶ 23 On January 29, 2016, the jury found defendant guilty of armed robbery with pepper spray and armed violence. It found him not guilty of armed robbery with a firearm and aggravated kidnapping.

¶ 24 Defendant filed a motion for a new trial on February 29, 2016. He subsequently filed a first amended motion for a new trial, which the trial court denied on April 11, 2016, and a second amended motion for a new trial with an additional citation, which the trial court denied May 19, 2016.

¶ 25 Defendant's sentencing hearing also took place on May 19, 2016. The parties agreed that the sentencing range was 10 to 30 years' imprisonment based on the weapon used to commit armed violence. In aggravation, the State called a deputy who testified that defendant was punished on October 2, 2015, for repeatedly yelling profanities at him. The State also called Bylls, who testified that defendant did not appear to be under the influence of drugs or alcohol when he was apprehended. McDougle read a victim impact statement in which she described the terror and panic she felt during the incident, and the physical pain and feeling of suffocation from the pepper spray. She stated that she was a retail manager and that since the robbery, she often felt anxious, nervous, stressed, and distrustful while working and when she was out alone.

Goetschel submitted a victim impact statement in which he stated that he suffered from post-traumatic stress disorder from serving in Afghanistan and that his condition was exacerbated by the robbery. He stated that despite his military service, being on the floor with a gun pointed at him was the scariest moment in his life. Goetschel described suffering from depression, having nightmares, and feeling nervous and depressed. He stated that it was very difficult to return to work at Radio Shack and that he had to change jobs. He also stated that he had suffered a physical injury from the pepper spray, in that he had developed a severe infection in his left eye that required medication.

¶ 26 Defendant's criminal history included arrests for theft, domestic battery, gambling, and driving under the influence of alcohol. Defendant had also received probation for possession of a controlled substance, and a petition to revoke that probation was pending. The State asked that defendant be sentenced to 25 years' imprisonment.

¶ 27 In mitigation, defendant called his grandmother. She testified that defendant had never been in trouble and that his "entire family [had] taught him nothing but morals and values." She testified that defendant "got caught up" in the crime. Defendant's grandmother did not know that defendant had been arrested for another felony offense before the instant crime.

¶ 28 Defendant submitted letters in support from his mother, a family friend, the owner of an accounting business where defendant had worked, and two leaders of nonprofit youth organizations in which defendant had participated. The letters discussed defendant's family support, religious upbringing, and interest in learning and working, and they asked that defendant be given a second chance.

¶ 29 In allocution, defendant stated as follows. He went to trial for his "story to be heard," which it never was because his statements were suppressed. He was "guilty by association"

because he was "with the wrong people," whom he had grown up with, and "did what anybody else would have done." The prosecutor's statements angered him because what she said was "based upon a picture she paints herself." Defendant apologized to his parents for all the court dates and what they went through. He also apologized to the victims for the "role [he] did play because it was not right." However, nothing about the case reflected his character and his life.

¶ 30 We summarize the trial court's findings. Regarding factors in aggravation, the evidence was clear that the robbery was well thought-out and not impulsive. There was also credible evidence that a loaded gun and pepper spray were used, and that at some point defendant held the gun in the store. Further, there was evidence of fleeing from the police and tossing things out of the car onto the expressway, including a loaded gun. The fact that defendant's conduct caused or threatened serious harm was implicit in the offense of armed robbery. However, it could consider the extent of the threat, which was aggravated by the fact that Goetschel was ordered to kneel down in the back room, and there was a threat to shoot him. Both victims talked about the emotional harm they suffered. Further, defendant had a history of criminal activity, most notably that defendant was on felony probation for unlawful possession of a controlled substance while the instant offense occurred, and he also had a juvenile theft adjudication. Still, it would keep in mind the nature and extent of the criminal history in that the prior crimes were not violent and did not involve weapons. Another factor in aggravation was that the sentence was necessary to deter others from committing the same crime. The State presented evidence of defendant's conduct in jail. The yelling was inappropriate, but it was one incident out of the three years defendant had been there, and it did not involve physical violence. Therefore, it would not put a great deal of weight on it.

¶ 31 In mitigation, defendant obtained his GED while incarcerated and he had participated in many other types of classes. The letters submitted on defendant's behalf said positive things about his attitude and character. Defendant's age was also a factor in mitigation, in that he was young and had a chance to be rehabilitated.

¶ 32 The trial court believed that defendant's sentence should be similar to Brown's because the same crime should not result in completely disparate sentences. The evidence showed that defendant and Brown were the ones who went inside the store. Each one did something the other did not, in that defendant held the gun but Brown encouraged him to shoot Goetschel. There was also the use of pepper spray, fleeing from police, and throwing a weapon out of the car, which all escalated the situation. There were arguments about exactly who did what, but it believed that the sentences should be consistent.

¶ 33 The sentencing range for armed violence was 10 to 30 years' imprisonment. The minimum sentence was not appropriate given the circumstances of the case, but the maximum was also not appropriate. It sentenced defendant to 18 years' imprisonment on each count, consistent with Brown, with the convictions to run concurrently.

¶ 34 The same day as his sentencing, defendant filed a motion to reconsider the sentence, arguing that he had a minimal adult criminal history, that he was a good candidate for rehabilitation, and that his conduct was the result of circumstances that were unlikely to recur. The trial court denied the motion, and defendant timely appealed.

¶ 35 II. ANALYSIS

¶ 36 A. Lineup

¶ 37 Defendant first argues that the State violated his due process rights by fashioning a suggestive lineup, in that defendant was the only individual not wearing a blue "armband." He

cites *Stovall v. Denno*, 388 U.S. 293, 302 (1967), where the defendant argued that the out-of-court identification procedure was "so unnecessarily suggestive and conducive to irreparable mistaken identification" as to violate due process of law. The Court stated that the determination was to be made in light of the totality of the circumstances. *Id.* Defendant also cites *Neil v. Biggers*, 409 U.S. 188, 199 (1972), where the Supreme Court stated that for any identification, the central issue was "whether under the 'totality of the circumstances' the identification was reliable even though the confrontation procedure was suggestive."

¶ 38 Defendant argues that because he was the only individual not wearing a blue armband in the lineup, the discrepancy arbitrarily and unjustifiably singled him out from the other candidates. He further argues that under the totality of the circumstances, Cantalupo's identification was unreliable. Defendant maintains that pursuant to Cantalupo's testimony, she only saw him for a few seconds when he walked past her carrying a garbage can. Defendant argues that the State's and trial court's reliance on the fact that Cantalupo asked to have the lineup move closer to her before identifying him, allegedly indicating that she was not relying on the armbands, is misplaced. Defendant contends that accepting such an argument would create the absurd result that a court may never deem a lineup impermissibly suggestive so long as the witness claims that suggestiveness did not factor into the ultimate identification.

¶ 39 A defendant who challenges the propriety of a pretrial identification procedure has the burden of proving that the procedure was unnecessarily suggestive and created a substantial likelihood of misidentification. *People v. Joiner*, 2018 IL App (1st) 150343, ¶ 39. We review the totality of the circumstances in making this determination. *Id.* Individuals in a photo array or lineup need not be physically identical. *Id.* Courts have found that identification procedures were not impermissibly suggestive where the defendant had a darker skin tone than the other

individuals (*id.* ¶ 41), where only the defendant wore glasses (*People v. Kubat*, 94 Ill. 2d 437, 472 (1983)), where the defendant had a different hair color (*People v. Smith*, 160 Ill. App. 3d 89, 92 (1987)) or length of hair than the others (*People v. Harrell*, 104 Ill. App. 3d 138, 145 (1982)), and where the defendant was the only one wearing red pants, like the suspected robber (*People v. Johnson*, 222 Ill. App 3d 1, 7 (1991)). Differences in appearance go to the weight of the identification rather than to its admissibility. *People v. Peterson*, 311 Ill. App. 3d 38, 49 (1999).

¶ 40 Even if a pretrial identification procedure was suggestive, it does not automatically require suppression of the evidence. Instead, we look at whether the identification was so tainted as to make it unreliable, considering the following factors: (1) the witness's opportunity to view the suspect during the offense; (2) the witness's degree of attention; (3) the accuracy of previous descriptions; (4) the witness's level of certainty at the time of the identification; (5) the length of time between the crime and identification; and (6) any prior acquaintance with the suspect that would enhance the witness's ability to recognize him. *Ortiz*, 2017 IL App (1st) 142559, ¶ 22. Courts also consider whether there was any pressure on the witness to make an identification. *People v. Simmons*, 2016 IL App (1st) 131300, ¶ 89. The identification's reliability is based on the totality of the circumstances, so no single factor is dispositive. *Id.* These factors serve to evaluate whether the witness's identification was independently reliable. *People v. Lacey*, 407 Ill. App. 3d 442, 459 (2011).

¶ 41 We will not reverse a trial court's factual determination that an identification procedure was not unduly suggestive unless it is against the manifest weight of the evidence, meaning that the opposite conclusion is apparent or the finding appears to be unreasonable, arbitrary, or not based on the evidence. *People v. Ortiz*, 2017 IL App (1st) 142559, ¶ 21. We review *de novo* the ultimate determination of whether the trial court's suppression ruling was appropriate. *Id.*

¶ 42 We conclude that the trial court's finding, that the lineup was not unduly suggestive, was not against the manifest weight of the evidence. Therefore, it did not err in denying the motion to suppress Cantalupo's identification of defendant. Although defendant refers to everyone else in the lineup wearing blue "armbands," the trial court referred to the bands as wristbands, and our observation of a photograph of the lineup confirms that this is a more accurate characterization. The trial court further noted that the wristbands did not stand out and that the lineup participants appeared reasonably close in age and appearance. We likewise agree with this observation. In particular, all individuals were African American and had long, curly/braided hair, and they also all had at least some facial hair. The lack of a wristband on defendant is much less apparent than the circumstances cited in prior cases that were found not to be suggestive, such as the defendant having a darker skin tone, being the only person wearing glasses, having a particular color of hair, having longer hair, or wearing the same color pants as the suspect. See *supra* ¶ 39. Indeed, the wristbands, which were similar to hospital wristbands, were so unobtrusive that defense counsel did not even mention them in the written motion for suppression or on direct examination of Detective Bylls, but rather first mentioned them on redirect examination.

¶ 43 Even if, *arguendo*, the lineup could be considered suggestive, we would conclude that Cantalupo's identification was independently reliable based on the factors discussed in *Ortiz*. See *supra* ¶ 40. She testified that she made eye contact with defendant outside of Radio Shack and smiled at him. She noticed that he was about her height and was a "nice-looking guy." Thus, Cantalupo had a good opportunity to view defendant and paid some degree of attention to him. Shortly afterwards, McDougle said that the Radio Shack had been robbed, and Cantalupo realized it must have been the men she saw. The length of time between the crime and the

identification was minimal, in that Cantalupo viewed the lineup the next day. Cantalupo testified that the police told her there was no pressure to identify anyone. Cantalupo further testified that she was pretty certain that defendant was the man that she saw, but she asked for the men to step closer "to make [it] a hundred percent certain." Although defendant argues that we cannot rely on Cantalupo's denial that the wristbands played a factor, we apply the aforementioned factors after it has been determined that the lineup could be suggestive, and the factors strongly indicate that Cantalupo's identification was independently reliable. This is especially true considering that, at the time of the lineup, she asked that the men step forward, which would not have been necessary if she was relying on the wristbands.

¶ 44 Finally, even if, *arguendo*, the admission of the lineup identification was error, the error was harmless. An evidentiary error is harmless if there is no reasonable probability that the jury would have acquitted the defendant absent the error. *People v. Shaw*, 2016 IL App (4th) 150444, ¶ 66. In deciding whether an error is harmless, a reviewing court may: (1) focus on the error to determine if it might have contributed to the conviction; (2) examine other properly admitted evidence to determine if it overwhelmingly supports the conviction; or (3) determine if the improperly admitted evidence is cumulative or duplicates properly admitted evidence. *People v. Barner*, 2015 IL 116949, ¶ 71.

¶ 45 Here, the other evidence at trial overwhelmingly supports defendant's conviction, in that defendant purchased pepper spray two days before the robbery, he fled from police, DNA evidence connected him to clothing used during the robbery, Brown testified as to defendant's involvement in the robbery, and defendant himself confessed to participating in the crime. The lineup identification was also cumulative in that Cantalupo identified defendant in court, and Brown's testimony and defendant's police interview also placed him at the crime scene.

¶ 46 B. Completeness Doctrine

¶ 47 Defendant's second argument is that the State violated his due process rights by excluding portions of his two-day confession, in violation of the completeness doctrine. Defendant argues that the trial court improperly permitted the State to place into evidence defendant's last interview without presenting evidence of the prior interviews in which he denied involvement in the robbery. Defendant argues that the final interview was not even recorded, contrary to the statutory requirements at that time.[2]

¶ 48 We review evidentiary rulings for an abuse of discretion. *People v. Craigen*, 2013 IL App (2d) 111300, ¶ 41. A trial court abuses its discretion where its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the trial court's view. *Id.* The interpretation of an Illinois rule of evidence is a question of law to which we apply *de novo* review. See *id.*

¶ 49 A statement that a defendant makes in custody after his arrest that is offered in his favor is not an admission, but instead constitutes hearsay and is not admissible at trial. *People v. Brown*, 249 Ill. App. 3d 986, 990 (1993). However, the completeness doctrine is an exception to the hearsay rule. *Id.* The common law completeness doctrine provides that the remainder of a writing, recording, or oral statement is admissible to prevent the jury from being misled, to put evidence in context to convey its true meaning, or to shed light on the meaning of admitted

[2] Defendant does not elaborate on this portion of his argument or cite to any authority in his brief, thereby forfeiting the issue for review. Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) ("Points not argued are waived"); *People v. Olsson*, 2014 IL App (2d) 131217, ¶ 16 (the failure to clearly define issues and support them with authority results in forfeiture of the argument).

evidence. *People v. Kraybill*, 2014 IL App (1st) 120232, ¶ 67. Illinois Rule of Evidence 106 codified the completeness doctrine in part. *Id.* It states, "When a *writing or recorded statement* or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it. (Emphasis added.) Ill. R. Evid. 106 (eff. Jan. 1, 2011). Thus, the common law doctrine applies to oral as well as written and recorded statements, whereas Rule 106 applies to only written and recorded statements.

¶ 50 Here, defendant's statements were all oral and unrecorded, making Rule 106 inapplicable. Further, as the common law completeness doctrine applies to "the remainder of" an oral statement, it does not apply to statements made during an entirely different interview. *Kraybill*, 2014 IL App (1st) 120232, ¶ 67. For example, in *Kraybill*, the court held that the completeness doctrine did not allow the defendant to introduce a 2004 recorded interview to explain oral statements he made in 2003 interviews. Similarly, in *Craigen*, 2013 IL App (2d) 111300, ¶ 46, this court held that the completeness doctrine did not require that an interview three months prior be admitted. We stated that the prior interview did not shed light on the later interview or place it in context, but merely contradicted it. *Id.* In *Brown*, the court held that two statements made about 1½ hours apart were not contemporaneous. *Brown*, 249 Ill. App. 3d at 990; see also *People v. Nicholls*, 236 Ill. App. 3d 275, 281 (1992) (completeness doctrine inapplicable because statements two hours apart were not contemporaneous). Here, like the aforementioned cases, the prior interviews did not take place at the same time as the interview in which defendant admitted to the crime, but rather took place the day before. Additionally, as in *Craigen*, the prior interviews did not shed light on the subsequent interview or put it in context,

but instead simply contradicted that interview. Accordingly, the trial court did not abuse its discretion in excluding the prior interviews from evidence.

¶ 51 Last, even if the trial court erroneously excluded defendant's first three interviews from trial, the evidentiary error was harmless due to the overwhelming evidence of defendant's guilt, discussed above. See *supra* ¶ 45.

¶ 52 C. Racial Composition of Jury

¶ 53 Defendant's third argument is that he did not receive a fair trial, and he was deprived of equal protection under the law, because his jury contained no African Americans even though he is African American. Defendant cites *Holland v. Illinois*, 493 U.S. 474, 480 (1990), for the proposition that every defendant has the right to object to a venire that is not designed to represent a fair cross-section of the community. He also cites *Taylor v. Louisiana*, 419 U.S. 522, 530 (1975), where the Court stated that a jury is charged with "guard[ing] against the exercise of arbitrary power," which cannot be achieved "if the jury pool is made up of only segments of the populance or if large, distinctive groups are excluded from the pool." Defendant's entire argument on this issue spans about one page of his brief.

¶ 54 The State argues that defendant has forfeited this argument. We agree. To preserve an issue for review, the defendant must object at trial and raise the issue in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Here, although defendant objected at trial, he did not raise the issue in any of his motions for a new trial. The plain error doctrine allows a reviewing court to consider an unpreserved error where either (1) a clear error occurs and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, or (2) a clear error occurs that is so serious that it affected the trial's fairness and challenged the integrity of the judicial process. *People v. Sebby*, 2017 IL 119445, ¶

48. However, defendant does not argue on appeal that the issue constitutes plain error, thereby forfeiting plain-error review. *People v. White*, 2016 IL App (2d) 140479, ¶ 42 (the failure to make a plain-error argument results in forfeiture of the claim on appeal); see also Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) ("Points not argued are waived"); *Olsson*, 2014 IL App (2d) 131217, ¶ 16.).

¶ 55 Even otherwise, defendant's argument fails on the merits. To show a *prima facie* violation of the requirement that a jury be drawn from a fair cross-section of the community, a defendant must show that: (1) the allegedly excluded group is a distinctive group in the community; (2) the representation of the group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and (3) the underrepresentation is due to the systemic exclusion of the group in the jury-selection process. *People v. Omar*, 281 Ill. App. 3d 407, 414 (1996). The State concedes the first factor, that African Americans are a distinctive group in the community. However, it argues, and we agree, that defendant did not making any showing at the trial court level or on appeal regarding the remaining two factors. That is, defendant has never made any representations regarding the number of African Americans in Du Page County, nor has he argued that this group was systemically excluded. Accordingly, defendant's argument provides no basis for relief.

¶ 56 D. Sentence

¶ 57 Last, defendant argues that the trial court erred in sentencing him to 18 years' imprisonment, despite his youth (22 years of age) at the time of sentencing, his rehabilitative potential ("enrolled in college"[3] coupled with a desire to continue), and the lack of a significant

[3] It is unclear what defendant means by his representation that he is "enrolled in college." The record establishes that defendant obtained his GED in prison, after the instant offense. An

criminal record (delinquency for theft and probation for possession of a minor amount of drugs). Defendant notes that he also took hundreds of hours of classes while incarcerated related to parenting, anger management, drug addiction, and a GED. He recognizes that armed robbery with pepper spray and armed violence are serious crimes, but he argues that his sentence should be significantly less based on the aforementioned considerations.

¶ 58 A reviewing court gives substantial deference to the trial court's sentencing decision because the trial court has observed the defendant and the proceedings and is therefore in a much better position to consider factors including the defendant's credibility, demeanor, moral character, mentality, environment, habits, and age. *People v. Snyder*, 2011 IL 111382, ¶ 36. We therefore accord great deference to a sentence within the appropriate sentencing range. *People v. Colon*, 2018 IL App (1st) 160120, ¶ 66. We will not disturb the trial court's sentencing decision absent an abuse of discretion, which occurs where the sentencing is greatly at variance with the law's spirit and purpose, or manifestly disproportionate to the nature of the offense. *Snyder*, 2011 IL 111382, ¶ 36. We may not substitute our judgment for that of the trial court just because we would have weighed sentencing factors differently. *Colon*, 2018 IL App (1st) 160120, ¶ 66. "Before this court will interfere with the sentence imposed, it must be manifest from the record that the sentence is excessive and not justified under any reasonable view which might be taken of the record." *People v. Smith*, 214 Ill. App. 3d 327, 338 (1991).

¶ 59 Here, defendant was convicted of armed robbery with pepper spray, and armed violence. Armed robbery with a pepper spray is a class X felony (720 ILCS 5/18-2(a)(1), (b) (West 2012)) with a sentencing range of between 6 and 30 years' imprisonment (730 ILCS 5/5-4.5-25(a)

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addendum to his presentence report states that he was enrolled in the College of Du Page from May 27, 2014, to August 3, 2014, but did not take credit courses.

(West 2012)). Armed violence under the circumstances here is a class X felony (720 ILCS 5/33A-2(a), 33A-3(a-5) (West 2012)) with a sentencing range of 10 to 30 years' imprisonment (720 ILCS 5/ 33A-3(a-5) (West 2012); 730 ILCS 5/5-4.5-25(a) (West 2012)).

¶ 60 The trial court provided a detailed review of the factors in aggravation and mitigation in this case. In aggravation, it considered that the crime was premeditated; that a loaded gun and pepper spray were used in the robbery; that defendant and Brown threatened to kill Goetschel; that defendant fled from police and tossed items, including a loaded gun, onto the expressway; that Goetschel and McDougle suffered emotional harm as a result of the crime; and that defendant had a criminal history, albeit somewhat limited. In mitigation, the trial court considered that defendant earned his GED in prison and had taken many classes; that defendant was young and had a chance to be rehabilitated, and that letters submitted in support of defendant said many positive things about his attitude and character. Finally, the trial court considered that Brown received an 18-year sentence. It stated that defendant and Brown had a similar level of culpability in the offense, and that their sentences should be consistent.

¶ 61 Thus, the trial court explicitly considered the factors defendant highlights, namely his youth, his progress in obtaining an education, and his limited criminal record. However, the most important sentencing factor is the seriousness of the offense, and a trial court is not required to give greater weight to mitigating factors, nor does the existence of mitigating factors require a minimum sentence or preclude a maximum sentence. *People v. Harmon*, 2015 IL App (1st) 122345, ¶ 123. Accordingly, the trial court properly considered the significant aggravating factors in this case, which included planning the robbery, threatening Goetschel with a loaded weapon, and the use of pepper spray on both him and McDougle. Further, it was appropriate for the trial court to consider Brown's sentence. See *People v. Horta*, 2016 IL App (2d) 140714, ¶

52 ("Fundamental fairness forbids arbitrary and unreasonable disparities between the sentences of similarly situated codefendents."). Defendant's sentence of 18 years is just a few years above the midpoint of the sentencing range and is the same sentence Brown received, even though Brown pleaded guilty and testified against defendant. In light of both the aggravating and mitigating factors, we cannot say that the trial court abused its discretion in imposing defendant's sentence.

¶ 62 III. CONCLUSION

¶ 63 For the reasons stated, we affirm the judgment of the Du Page County circuit court. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal.

¶ 64 Affirmed.