

Supreme Court Rule 431(b) (eff. July 1, 2012) when it failed to inquire of the prospective jurors whether they understood the principles as stated therein. According to defendant, because the evidence was closely balanced in this case, the error in instructing the jury tipped the scales of justice against him, requiring a new trial. Defendant further argues that the trial court erred when it included a 15-year firearm enhancement to his sentence where the jury did not make a special finding regarding said enhancement. For the reasons that follow, we affirm the judgment of the trial court.

¶ 3

BACKGROUND

¶ 4 As defendant's primary claim is that the evidence is closely balanced due to the lack of reliable identifications of him as a participant in the offense, we recite the facts as necessary for the disposition of this appeal.

¶ 5 On September 12, 2013, Brian Rollins was chased out of his home and was ultimately shot ten times and killed. As a result, defendant was charged in a 95-count indictment with numerous counts of first degree murder, felony murder, home invasion with a firearm, aggravated kidnapping, residential burglary, attempted armed robbery with a firearm, and aggravated unlawful restraint. The State, however, only proceeded to a jury trial on eight of those counts.

¶ 6 During *voir dire*, the trial court recited the four principles set forth in Rule 431(b) to the jury. While the trial court inquired of the venire whether they had "a problem or disagreement" with these principles, the trial court did not inquire if the venire understood these principles.

¶ 7 At trial, the State presented evidence that on September 12, 2013, Rollins was shot and killed after he was chased from his home by defendant. The evidence included the eyewitness testimony of three individuals who testified they knew defendant from their neighborhood and

observed defendant with a handgun while chasing Rollins. Specifically, Lashuna Hudson testified that on September 12, 2013, she was in the kitchen at the home she shared with her boyfriend, Rollins, on 105th Street when she heard a knock at the door. At that time, Rollins was in the basement with his friend Matthews Parker. She called down to the basement for Rollins to answer the door, which Rollins did. Immediately thereafter a man unknown to Hudson came into the kitchen brandishing a firearm. The man instructed Hudson to be quiet as he rummaged through her kitchen cabinets. Unsatisfied with his search, the man exited the kitchen. Hudson then heard two or three gunshots and three men rushed into the kitchen with raised firearms. Two were wearing white shirts and one was wearing a blue and white striped polo shirt. Hudson recognized the man wearing the blue and white striped polo shirt as defendant, a man she knew from her neighborhood. As the three men ran out the back door, Hudson escaped through the front door.

¶ 8 Parker testified that on September 12, 2013, at 1 p.m. he was in the basement of Rollins' home when he heard a commotion. Parker fled through the basement door and ran through the alley to his nearby home where he retrieved a .380 caliber handgun. Parker then ran back to Rollins' house where he observed Hudson running out the front door screaming, "They shooting him." He also noticed Diamone Douglas standing across the street. Parker then observed someone running in the alley so he ran after them. Once in the alley, he observed two men wearing white shirts running west and heard four or five shots coming from the direction of 104th Place. Parker then fired two shots in the direction of the two men and went to look for Rollins. Parker found Rollins lying face down on 104th Place having been shot multiple times.

¶ 9 Douglas, who at the time of trial was in the custody of the Cook County Department of Corrections for her previous failure to appear and testify in this case, testified that on September

12, 2013, at 1 p.m. she was walking across the street from Rollins' house when she observed Rollins run out the front door and down the gangway to the alley. Shortly thereafter, she observed defendant run after Rollins while pointing a handgun in Rollins' direction. Douglas testified she knew Rollins and defendant from her neighborhood. Douglas then heard gunshots. On November 20, 2013, she identified Rollins and defendant from photos provided to her by the assistant State's attorney.

¶ 10 Shalonda Lowe testified she was living on 105th Street and Perry Avenue at the time of Rollins' murder and had known defendant since he was an infant. Just before 1 p.m. on September 12, 2013, she went outside as defendant and two other men were passing her home. She "knew something wasn't right" and asked the men what was "going on," but the men kept walking and did not respond. Lowe walked behind them and observed the three men go to Rollins' house. Lowe also testified she noticed Douglas run away from Rollins' house while carrying a handgun. Next she observed Rollins run out of the house towards 104th Place with defendant running behind him. Lowe then heard gunshots and observed defendant shoot at Rollins. From her friend's porch, Lowe watched as Rollins slipped and fell. Lying on his back, Rollins put his hands in the air and said, "Why are you doing this to me? I ain't done nothing to none of you guys." Defendant responded, "F[***] you" and stood over Rollins and shot him three or four times. Lowe did not speak with the police until October 24, 2013, when she identified defendant in a photo array.

¶ 11 Chicago Police forensic investigator Zbigniew Niegwdach testified that he was the evidence technician assigned to this case. According to Niegwdach, he recovered four different types of shell cartridge casings from the scene. Where Rollins had collapsed Niegwdach recovered seven .40 caliber shell cartridge casings. Near Rollins' front porch he recovered two

live rounds and three expended shell casings of an unknown caliber. In the alley behind Rollins' home, he recovered three expended .45 caliber shell cartridge casings and one .380 caliber casing. Niegwdach also observed blood drops on the sidewalk in front of Rollins' home and in the gangway next to Rollins' home. Niegwdach also recovered a fingerprint lift from one of the kitchen cabinets inside Rollins' home.

¶ 12 Fingerprint examiner Sheila Daughy testified that she received the latent print recovered from Rollins' kitchen, but that the print was not suitable for comparison. Daughy further testified that she was not able to recover any suitable latent fingerprints from any of the shell casings or live rounds recovered from the scene.

¶ 13 The parties stipulated that, on October 14, 2013, the Chicago police recovered a .22 caliber automatic pistol from an individual named Courtney Davis in an unrelated investigation, which was inventoried. In addition, on January 24, 2014, the Chicago police recovered a .40 caliber semiautomatic pistol from an individual named Artravius Scott in an unrelated investigation, which was also inventoried.

¶ 14 Forensic scientist Caryn Tucker testified without objection as an expert in firearm tool mark identification. She concluded that all seven of the .40 caliber cartridge casings recovered near Rollins' body were fired from the same firearm, that all three of the .22 caliber cartridge casings found near Rollins' front porch were fired by the same firearm, and that all three of the .45 caliber casings recovered from the alley were fired from the same firearm. She further testified that she received the .380 caliber casing that was recovered in the alley and that none of these four shell casings are interchangeable. Tucker also testified that she entered the information about the shell casings into the Integrated Ballistic Identification System database and determined that the three .22 caliber bullets were fired from the firearm recovered from

Courtney Davis. She also concluded that the .40 caliber bullets were fired from the firearm recovered from Artravius Scott.

¶ 15 Dr. Benjamin Soriano, an assistant medical examiner with the Cook County medical examiner's office, testified as an expert in forensic pathology without objection. Dr. Soriano testified that he performed Rollins' autopsy on September 13, 2013, during which he took photographs and prepared a report of his findings. Dr. Soriano found ten gunshot wounds on Rollins' body: the right side of his head, left upper back, left lateral chest, left index finger, right wrist, the back of his right hand, two in his right thigh, left thigh, and right foot. Dr. Soriano testified one of the bullets that entered through Rollins' right thigh was recovered in Rollins' abdominal wall. According to Dr. Soriano, the wounds to Rollins' hands were consistent with being shot while Rollins' hands were up. Dr. Soriano further opined that the shot to Rollins' head was consistent with being shot while on the ground and could have been fatal. Dr. Soriano ultimately opined that Rollins' cause of death was from multiple gunshot wounds and his manner of death was homicide.

¶ 16 The State rested and defendant's motion for a directed verdict was denied. The defendant declined to testify, and the defense presented two witnesses and a stipulation. Detective Arthur Davis testified he authored the police reports for this case and that on September 15, 2013, defendant was placed in custody and then subsequently released without charges. Defendant was placed into custody again for this case on November 7, 2013. Detective Keith Allen testified that he worked alongside Detective Davis and interviewed Lowe. Detective Allen confirmed that his report of Lowe's interview did not include a statement that defendant tried to shoot Parker. The parties stipulated that on September 12, 2013, at 10:20 p.m. detectives received a telephone call from a person who identified herself as Kiera Davis and related that her boyfriend Matthews

Parker told her that he was at the house when Rollins was killed, that “Ramone” killed Rollins and that “Nook, Santonio, and Diamone” participated. The defense then rested.

¶ 17 After hearing closing arguments and jury instructions, the jury deliberated and ultimately found defendant guilty of first degree murder. The jury deadlocked on whether a firearm enhancement applied, and the trial court declared a mistrial on that issue.

¶ 18 At the sentencing hearing, the trial court heard evidence in aggravation and mitigation. The State presented a victim impact statement from the victim’s mother, Lynette Rollins. The State also introduced two prior convictions for aggravated unlawful use of a weapon and possession of a stolen motor vehicle. Defendant presented no evidence in mitigation.

¶ 19 The State then argued in aggravation that defendant was on parole for unlawful use of a weapon by a felon at the time he committed the murder. The State recounted the evidence presented at trial and emphasized that the victim was chased out of his home at gunpoint and shot on the street in front of the very elementary school that defendant had attended. The State argued that the minimum sentence should be 35 years and defense counsel objected. The court then stated that “the jury found he didn’t personally discharge the firearm.” The State then refined its position arguing, “the fact that he was on parole for a firearms offense at the time and also had a previous Class 2 felony indicates that he is not deserving of the minimum sentence in this case and that he needs to understand that the more he commits these crimes, the more severe the penalty will be.”

¶ 20 The defense requested the court sentence defendant fairly and take into consideration the context of the murder; specifically, that the victim was a drug dealer and the murder occurred as a result of a “robbery gone wrong of a drug house.”

¶ 21 After considering the arguments of counsel and the presentence investigation report, the

court sentenced defendant to 40 years' imprisonment. In sentencing defendant, the trial court "acknowledge[d] the fact that [the jury] did not find that he personally discharged the firearm that caused death," but asserted the evidence demonstrated the victim was shot to death and therefore the court was compelled to "add at least the 15-year enhancement to the offense of murder." The trial court then explained that the sentencing range was 35-75 years to life. The court noted the premeditation involved in the crime and that the victim was "chased out on the street and gunned down in cold blood." The court also acknowledged that, according to the presentencing investigation report, defendant did not have an "easy life."

¶ 22 Defendant filed a motion to reconsider the sentence, arguing that the trial court improperly included a 15-year firearm enhancement based on a finding not made by the jury. The trial court denied the motion, clarifying that it did not apply a 15-year enhancement to defendant's sentence and that he was properly sentenced to 40 years' imprisonment regardless of any enhancement. This appeal followed.

¶ 23 ANALYSIS

¶ 24 On appeal, defendant raises two contentions: (1) the trial court violated Illinois Supreme Court Rule 431(b) when it failed to inquire of the prospective jurors whether they understood the *Zehr* principles and the evidence in this case was closely balanced; and (2) the trial court improperly included a 15-year firearm enhancement to his sentence where the jury did not make a special finding regarding said enhancement. We address each contention in turn.

¶ 25 Supreme Court Rule 431(b)

¶ 26 Defendant contends that this matter should be reversed and remanded for a new trial because the trial court failed to inquire whether the venire understood and accepted the four principles set forth in Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). Defendant

acknowledges he failed to preserve this claim for review, and accordingly requests we consider his claim under the first prong of the plain-error doctrine.

¶ 27 Defendant did not object to the trial court's questioning during *voir dire*, and he did not raise this issue in a posttrial motion; therefore, any claimed error must be the subject of a plain-error analysis. See *People v. Herron*, 215 Ill. 2d 167, 181-82 (2005). The plain-error doctrine allows us to consider a forfeited error when either (1) a clear or obvious error occurs and the evidence is so closely balanced that the error alone threatens to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear and obvious error occurs and that error is so serious that it affects the fairness of the defendant's trial and challenges the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). Under both prongs of the plain-error analysis, the burden of persuasion remains with the defendant. *Id.* Before we make a plain-error analysis, we first determine whether an error occurred, for, absent error, there can be no plain error. *People v. Wilson*, 404 Ill. App. 3d 244, 247 (2010); *People v. Lampley*, 2011 IL App (1st) 090661-B, ¶ 34.

¶ 28 In *People v. Zehr*, 103 Ill. 2d 472, 477 (1984), our supreme court held that “essential to the qualification of jurors in a criminal case is that they know” that the defendant: (1) is presumed innocent; (2) is not required to offer any evidence on his own behalf; (3) must be proved guilty beyond a reasonable doubt; and (4) may decide not to testify on his own behalf and that cannot be held against him. It follows that this qualification must come at the outset of trial because if a juror has a bias against any of these basic guarantees, an instruction given at the end of the trial will have little effect. *Id.*

¶ 29 In light of *Zehr*, Rule 431(b) provides:

"The court shall ask each potential juror, individually or in a group, whether that juror

understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that if a defendant does not testify it cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's decision not to testify when the defendant objects.

The court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." Ill. S. Ct. R. 431(b) (eff. July 1, 2012).

¶ 30 Here, we find *People v. Wilmington*, 2013 IL 112938, to be instructive. In *Wilmington*, prior to the *voir dire* of the individual jury panel members, the trial judge admonished the entire group of potential jurors about each of the principles set forth in Rule 431(b). *Id.* ¶ 28. Later, in the course of admonitions, the trial court again addressed the principles of Rule 431(b); however, it did not inquire into whether the prospective jurors understood and accepted the principle that they could not hold it against defendant if he exercised his right not to testify. *Id.* Further, in questioning the prospective jurors regarding the principles, the trial court asked, "Is there anyone in the courtroom in the jury box amongst you who disagrees with this fundamental principle of law? If so, please raise your hand." *Id.* Before our supreme court, the defendant argued the trial judge violated Rule 431(b) in that he did not ask prospective jurors whether they understood and accepted the principle that they could not hold it against the defendant if he exercised his right not to testify. *Id.* ¶ 30. The defendant also asserted that the judge erred by asking only whether the prospective jurors accepted the other three principles enumerated in the rule, but not asking

whether they also understood those principles. *Id.*

¶ 31 Our supreme court focused on whether the trial court adequately inquired into whether the potential jurors understood the Rule 431(b) principles when it asked the question, “Is there anyone *** who disagrees with this fundamental principle of law?” Our supreme court held:

“Rule 431(b) requires that the trial court ask potential jurors whether they *understand* and *accept* the enumerated principles, mandating ‘a specific question and response process’ [Citation.] While it may be arguable that the court’s asking for disagreement, and getting none, is equivalent to juror *acceptance* of the principles, the trial court’s failure to ask jurors if they *understood* the four Rule 431(b) principles is error in and of itself.

Moreover, the trial court did not even inquire regarding the jury’s understanding and acceptance of the principle that defendant’s failure to testify could not be held against him. Thus, error clearly occurred.” (Emphases in original.) *Id.* ¶ 32 (citing *People v. Thompson*, 238 Ill. 2d 598, 607 (2010)).

¶ 32 Defendant argues, and the State concedes, that the trial court erred when it did not inquire of the venire whether it understood the four *Zehr* principles. The record reflects that the trial court asked the venire to raise their hands if they had “a disagreement or a problem” with the *Zehr* principles. Under *Wilmington*, this form of questioning does not comport with Rule 431(b)’s requirement that the trial judge ask about the venire’s understanding of the principles. *Id.* ¶ 32. Accordingly, we agree with defendant and the State that the trial court erred.

¶ 33 Under the first prong of the plain-error doctrine, however, even where the defendant demonstrates that a clear and obvious error occurred, the burden remains on the defendant to establish that the “evidence is so closely balanced that the error alone threatened to tip the scales of justice against” him. See *People v. Nowells*, 2013 IL App (1st) 113209, ¶ 18. “If the

defendant carries that burden, prejudice is not presumed; rather, ‘[t]he error is actually prejudicial.’ ” *People v. Sebby*, 2017 IL 119445, ¶ 51 (quoting *Herron*, 215 Ill. 2d at 193). In determining whether the evidence adduced at trial was closely balanced, “a reviewing court must evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of it within the context of the case.” *Sebby*, 2017 IL 119445, ¶ 53. This inquiry “involves an assessment of the evidence on the elements of the charged offense or offenses, along with any evidence regarding the witnesses’ credibility.” *Id.*

¶ 34 Defendant argues that the evidence identifying him as one of the participants in the shooting was closely balanced because no forensic evidence linked him to the shooting and he did not make an inculpatory statement. Defendant also asserts that eyewitness testimony is fallible and that the testimony of the three identification witnesses here—Hudson, Douglas, and Lowe—was unreliable due to their limited opportunity to view the shooters, failure to identify the defendant immediately after the shooting, and issues with their credibility.

¶ 35 In assessing identification testimony, Illinois courts utilize a five-factor test established in *Neil v. Biggers*, 409 U.S. 188, 199-200 (1972); *People v. Slim*, 127 Ill. 2d 302, 307 (1989). The factors are “(1) the opportunity the victim had to view the criminal at the time of the crime; (2) the witness’ degree of attention; (3) the accuracy of the witness’ prior description of the criminal; (4) the level of certainty demonstrated by the victim at the identification confrontation; and (5) the length of time between the crime and the identification confrontation.” *Slim*, 127 Ill. 2d at 307-08; see also *In re M.W.*, 232 Ill. 2d 408, 435 (2009) (stating that the *Biggers* factors provide a “useful framework for assessing whether the evidence was closely balanced”). Courts also consider whether the witness was acquainted with the suspect before the crime, and whether there was any pressure on the witness to make a certain identification. *People v. Brooks*, 187 Ill.

2d 91, 130 (1999).

¶ 36 In regard to the specific identifications of defendant made by Hudson, Douglas, and Lowe, all three witnesses observed defendant in broad daylight at 1 p.m. in the afternoon, albeit from different locations. All three were familiar with defendant from the neighborhood with Lowe having known defendant since he was an infant. As to the degree of the witness' attention, all three were focused on defendant. Lowe even had the opportunity to come face to face with defendant outside her home immediately prior to the shooting. All three witnesses testified in detail regarding defendant's movements and how he chased the victim out of his home, down the gangway, into the alley, and ultimately onto the grass of 104th Place. While defendant argues that Hudson's identification of him was unreliable because she was focused on the weapon he was carrying, her testimony demonstrates otherwise. Even though defendant was holding a handgun, Hudson testified regarding his height, his complexion, his eye color, and the type of clothing he was wearing. This testimony demonstrates Hudson was not solely focused on the weapon as defendant suggests. See *In re J.J.*, 2016 IL App (1st) 160379, ¶ 30 (the victim was still able to be "detailed and descriptive" despite the presence of a weapon).

¶ 37 In addition, the record demonstrates that all three were certain in their identifications of defendant and never wavered. See *People v. Green*, 2017 IL App (1st) 152513, ¶ 112 (the eyewitness never wavered in his degree of certainty that the defendant was the shooter, despite not identifying the defendant until three months after the shooting). Defendant, however, disagrees and maintains that Hudson's identification is unreliable because she first identified defendant in the photo array as someone she knew, not as someone who committed the offense. Yet the evidence demonstrates that Hudson testified she first identified defendant when he came into her kitchen, not during the photo array. Furthermore, Hudson identified defendant in the

photo array the next day and out of a lineup the day after that. Defendant also criticizes Douglas and Lowe's failure to identify him immediately and argues that the accuracy of their identifications decreased between the time the incident occurred and their identifications of him. We disagree. In this instance, Douglas identified defendant one month after the offense and Lowe identified defendant two months after the offense. We do not find this period of time to be so lengthy as to render their identifications unreliable. Courts have found identifications to be reliable even where they were made even two years after an offense. See *People v. Malone*, 2012 IL App (1st) 110517, ¶ 36 (identification reliable where made a year and four months after crime); *People v. Rodgers*, 53 Ill. 2d 207, 213-14 (1972) (identification made two years after the offense); see also *Brooks*, 187 Ill. 2d at 130 ("Even if the conditions for viewing the perpetrators are less than ideal, when a witness sees the face of someone he knows, it is less suspicious when he identifies that person 22 months later than if he would have seen the face of a complete stranger and tried to identify that person 22 months later.").

¶ 38 Defendant also points to what he believes are numerous inaccuracies in Lowe's testimony so as to disqualify her identification of him. Even if we were to set aside Lowe's identification of defendant, we would still have two eyewitnesses who reliably identified defendant as a participant in the victim's murder. Indeed, even one positive and reliable identification of a defendant is enough to sustain a murder conviction. See *In re M.W.*, 232 Ill. 2d at 436; *People v. Homes*, 274 Ill. App. 3d 612, 621 (1995) (a defendant may be convicted on the testimony of even a single eyewitness, if such testimony is positive and credible and the witness viewed the accused under conditions permitting a positive identification to be made). In sum, weighing the *Biggers* factors, we conclude the identifications were sufficiently reliable and do not render the evidence in this case to be closely balanced. See *People v. Jackson*, 2016 IL App (1st) 133741, ¶

60 (finding eyewitness evidence was not closely balanced after applying the *Biggers* factors); *In re M.W.*, 232 Ill. 2d at 435-36.

¶ 39 After reviewing the entire record in this case, we do not find the evidence to be closely balanced. Hudson, Douglas, and Lowe all knew defendant prior to the shooting and reliably and credibly identified defendant as one of the shooters with no significant discrepancies. Each of the witnesses knew defendant from the neighborhood and, in fact, Lowe testified that she knew defendant from the time he was an infant. Their testimonies, along with the testimony of Parker, established that defendant was the man in the striped shirt that entered Hudson's home armed with a handgun. Defendant was then observed by Douglas fleeing from the house and chasing the victim down the gangway. Lowe then viewed defendant chase Rollins and then, after Rollins fell, observed defendant shoot Rollins multiple times. The testimony bears that defendant was observed by someone at all times during the duration of the incident.

¶ 40 Moreover, the physical evidence corroborates the witness testimony. Four different shell casings were discovered at the scene including a .380 caliber casing that was discovered in the alley behind the victim's home. The firearm expert testified that these four bullet casings were not interchangeable and thus four separate weapons were discharged in the vicinity of the crime scene. This physical evidence corroborates Hudson's testimony that three men, each armed with handguns, entered her home, as well as Parker's testimony that he fired a .380 caliber handgun in the alley behind the victim's home.

¶ 41 In addition, the medical examiner's testimony regarding the location of the victim's gunshot wounds corroborates Lowe's testimony regarding her observations of defendant being shot. Specifically, Lowe testified that she observed defendant shoot at Rollins as Rollins was proceeding toward 104th Place while being chased by defendant. The medical examiner's

testimony corroborates Lowe's testimony as the medical examiner through his testimony established that the victim was shot in the back. Lowe further testified that the victim fell onto the ground and was on his back with his arms up in the air as defendant stood over him and shot him multiple times. The medical examiner testified that the victim had defensive wounds to both of his hands, as if he had been holding his hands up in front of him, and that he had a gunshot wound that went through his leg and into his abdominal cavity. This too corroborates Lowe's testimony.

¶ 42 Defendant further argues that Lowe's testimony should be discounted because there is no evidence defendant shot at Parker after he shot defendant. Indeed, Parker did not testify that defendant shot in his direction and Lowe did not provide this information to the detectives investigating the shooting. This portion of Lowe's testimony, however, bears more on Lowe's credibility. The fact the jury was deadlocked on whether defendant personally discharged the firearm causing Rollins' death demonstrates that it is possible that the jury did not find Lowe's testimony to be completely credible and thus did not give Lowe's testimony too much weight. See *People v. Tenney*, 205 Ill. 2d 411, 428 (2002) (it is the function of the jury to assess the credibility of the witnesses, the weight to be given their testimony, and the inferences drawn from the evidence). Regardless, having been presented with all the evidence, the jury nonetheless found defendant guilty of first degree murder.

¶ 43 Viewed in its totality, the evidence finding defendant guilty of murder was not closely balanced. As the defendant failed to meet his burden that the evidence at trial was closely balanced, the error does not rise to the level of plain error. See *Jackson*, 2016 IL App (1st) 133741, ¶ 60; *In re M.W.*, 232 Ill. 2d at 435-36.

¶ 44

Sentencing Error

¶ 45 Defendant next urges us to conclude that he did not receive a fair sentencing hearing and requests we “strike the 15-year enhancement from his sentence.” In response, the State asserts that the trial court did not apply a 15-year enhancement to defendant’s sentence. We agree with the State.

¶ 46 The trial court’s sentencing determination is entitled to great deference as the trial court is generally in a better position than the reviewing court to determine the appropriate sentence. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). As a reviewing court, we cannot substitute our judgment for that of the sentencing court just because we would have weighed the factors differently. *Id.* But, even where the sentence imposed is within the statutory range, an abuse of discretion may be found when the sentence is “greatly at variance with the purpose and spirit of the law, or manifestly disproportionate to the nature of the offense.” *Id.* at 210. All penalties are to be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. *People v. Guevara*, 216 Ill. 2d 553, 543 (2005); Ill. Const. 1970, art. 1, § 11. The trial court’s decision will not be disturbed absent an abuse of discretion. *People v. Streit*, 142 Ill. 2d 13, 19 (1991).

¶ 47 Our review of the record of the sentencing proceedings reveals that the trial court did not apply a 15-year enhancement to defendant’s sentence. At the sentencing hearing, the trial court acknowledged the fact that the jury did not find that defendant had personally discharged the firearm which caused the victim’s death. The trial court stated, however, that there was no question that the other individuals involved were also armed with weapons and that the victim died from gunshot wounds. In sentencing defendant, the trial court stated it would add “at least the 15-year enhancement to the offense of murder, which gives us a minimum of 35 years, which

could go to 75 years, which could go to life.” The trial court also noted the premeditation involved, defendant’s presentence investigation report, the fact the victim’s home was a “drug house,” and that the victim was “chased out on the street and gunned down in cold blood.” The trial court then sentenced defendant to 40 years’ imprisonment.

¶ 48 Thereafter, defendant filed a motion to reconsider the sentence arguing that the trial court improperly included a 15-year firearm enhancement based on a finding not made by the jury.

After hearing arguments in the matter, the trial court stated:

“Let me note that I heard the evidence along with the jury. I understand the jury returned a verdict of guilty of first degree murder. The jury did not return a verdict form indicating that the defendant personally discharged a firearm that caused death. There were other people involved. There was an accountability instruction given.

The jury made - - thought [*sic*] it was not clear as to who actually fired the fatal shots. I get that. He is not to be sentenced with that type of enhancement which a minimum of 45 years in the penitentiary had they done that. The value of this case is going to be for years [*sic*].

And I know from the evidence in this case that the deceased died by way of a gunshots [*sic*] wound during this home invasion that ended up as a chase outside and was gun down [*sic*] by multiple people on the street. Mr. Riley Palmer was part of that. The jury found him guilty of that.

So without an enhancement any kind of gun enhancement, I am still sentencing him to less than the maximum, more than the minimum, the 40 year sentence is within the range whether there is an enhancement or not.

* * *

This case is worth the 40 year[s] that he received with any enhancement or without any enhancements. I am comfortable with that. It's less than he would have received had the jury made that special finding. And it's much less than the maximum sentence to first degree murder without any enhancement[.]”

¶ 49 Our review of the record reveals that the trial court did not include a firearm enhancement to defendant's sentence as defendant suggests. While the trial court initially used the word “enhancement” when sentencing defendant, on reconsideration the trial court clarified its sentence and explained its reasoning. Ultimately, the trial court imposed a 40-year sentence regardless of any enhancement.

¶ 50 We further observe that in sentencing defendant, the trial court considered the evidence established at trial—including the fact the victim had been shot 10 times—and sentenced defendant squarely within the statutory range for murder of 20 to 60 years. See 730 ILCS 5/5-8-1(a)(1) (West 2016). Our case law is clear that “the sentencing court may consider the nature and extent of the force employed and the physical manner in which the offender caused the victim's death.” *People v. Latona*, 268 Ill. App. 3d 718, 730 (1994). This principle is supported by the “sound public policy” that “a defendant's sentence be varied in accordance with the particular circumstances of the criminal offense committed.” *People v. Saldivar*, 113 Ill. 2d 256, 269 (1986). Here, the trial court properly considered the matter and degree of defendant's conduct during sentencing. Accordingly, we find the sentence defendant received to be proportionate to the serious nature of the offense he committed and consistent with the purpose of the law and find no abuse of discretion in sentencing.

¶ 51 CONCLUSION

¶ 52 For the reasons stated above, we affirm the judgment of the trial court.

1-16-1520

¶ 53 Affirmed.