

2019 IL App (1st) 161973-U

No. 1-16-1973

Order filed August 30, 2019

Fifth Division

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 18272
	)	
CANDELARIO SAUCEDO,	)	Honorable
	)	Michael B. McHale,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE LAMPKIN delivered the judgment of the court.  
Presiding Justice Rochford and Justice Hall concurred in the judgment.

**ORDER**

¶ 1 *Held:* We reverse defendant's conviction for unlawful possession of a firearm by a street gang member because the evidence was insufficient to prove beyond a reasonable doubt that defendant was a member of a street gang.

¶ 2 Defendant Candelario Saucedo was convicted of unlawful possession of a firearm by a street gang member and was sentenced to 10 years in prison. On appeal, he contends that the evidence was insufficient to prove his guilt beyond a reasonable doubt. A person is guilty of unlawful possession of a firearm by a street gang member if he possessed a firearm, did not have

a valid Firearm Owner's Identification (FOID) card, and was a member of a street gang. 720 ILCS 5/24-1.8(a) (West 2018). Only the final element is at issue here. Under the statute, a street gang is defined as a combination of three or more persons, with an established hierarchy, that engages in a course or pattern of criminal activity. 740 ILCS 147/10 (West 2018). Although the evidence at trial established that defendant was a member of a gang in the colloquial sense of that term, it did not prove beyond a reasonable doubt that the gang was a street gang within the meaning of the statute. In particular, there was no evidence to support a finding that the gang had an established hierarchy. We therefore reverse defendant's conviction for unlawful possession of a firearm by a street gang member. Defendant was also convicted of unlawful use or possession of a weapon by a felon and aggravated unlawful use of a weapon, and he does not challenge those convictions on appeal. Because the circuit court did not sentence defendant on either of his unchallenged convictions, we remand for resentencing.<sup>1</sup>

¶ 3

### I. BACKGROUND

¶ 4 While on patrol, Chicago police officers Ana Pacheco and Todd Stremplewski heard several gunshots. They drove toward the location of the gunshots and saw defendant emerging from an alley carrying a gun. After a short foot chase, the officers detained defendant and retrieved the gun. Defendant contested the officers' testimony at trial, but he does not argue on appeal that the evidence failed to establish that he possessed a firearm, so we need not recount the competing testimony concerning that element of the offense in further detail. In addition, the parties stipulated at trial that defendant did not have a valid FOID card, conclusively establishing

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<sup>1</sup> In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order.

another element of the offense. We thus focus on the evidence concerning the final element—whether defendant was a member of a street gang.

¶ 5 Detective Art Young interviewed defendant after his arrest. Young testified that he had been investigating a shooting that occurred the prior day in a nearby area. Young’s investigation had revealed that the victim of that shooting was a member of a gang known as the Ambrose. Young asked defendant if he had any information about that shooting, and defendant stated that he had heard that the shooters were members of the Satan Disciples gang. Young asked defendant about his own gang membership, and defendant replied that he was (in Young’s words) “a member of the Ambrose street gang.” Young later clarified that this was not a verbatim statement from defendant but was instead based on notes that Young took during the interview. Young testified that defendant had tattoos of a knight and the numbers “1” and “8” on his forearms. Defendant told Young that the knight was an Ambrose gang symbol and the numbers “1” and “8” represented the Ambrose’s territory on 18th Street. Young conceded that he was not an expert on gangs. He did not testify about the Ambrose’s organizational structure or criminal activities, nor did he offer an opinion on whether the Ambrose were a street gang within the meaning of the statute.

¶ 6 Defendant’s girlfriend, Amanda Mateo, testified that defendant had been a member of the Ambrose, but that he left the gang in December 2012, several months before the events at issue here, after the birth of the couple’s child. Mateo testified that she was familiar with the Ambrose and some of its members because she grew up around 18th Street. She testified that there was “spray paint from the gang” in that neighborhood, and that the knight symbol was “everywhere.”

She also testified that the Ambrose were rivals with the Satan Disciples, and that there was “violence and shootings” between the gangs that resulted in people getting hurt and killed.

¶ 7 Like Mateo, defendant testified that he had previously been a member of the Ambrose, but he claimed to have left the gang in early 2012 upon learning that Mateo was pregnant. He explained that, to leave the gang, other members had to “beat [him] up.” He described a similar process for joining the gang.

¶ 8 In closing argument, defense counsel argued that the arresting officers’ testimony about defendant’s gun possession was unbelievable. Defense counsel also argued that defendant was not a member of the Ambrose on the day in question. Neither the defense nor the State, however, addressed whether the Ambrose qualified as a street gang under the statute. Nor did either side request that the jury be instructed on the statutory definition of that term.

¶ 9 The jury found defendant guilty of unlawful possession of a firearm by a street gang member, as well as unlawful use or possession of a weapon by a felon and aggravated unlawful use of a weapon. The circuit court sentenced defendant to 10 years in prison on the unlawful possession of a firearm by a street gang member conviction but did not impose sentences on the additional convictions, concluding that they merged.

¶ 10

## II. ANALYSIS

¶ 11 On appeal, defendant argues that his conviction for unlawful possession of a firearm by a street gang member must be reversed because the evidence failed to establish that he was a member of a street gang. Defendant no longer contests that he was a member of the Ambrose, but he argues that the evidence was insufficient to prove that the Ambrose were a street gang, as statutorily defined. When considering a challenge to the sufficiency of the evidence, our task is

not to reweigh the evidence, reassess questions of witness credibility, or substitute our judgment for that of the factfinder. *People v. Hardman*, 2017 IL 121453, ¶ 37. Rather, we must view the evidence in the light most favorable to the State, draw all reasonable inferences from the evidence in the State’s favor, and ask whether any rational trier of fact could have found the elements of the offense beyond a reasonable doubt. *People v. Newton*, 2018 IL 122958, ¶ 24. Under this standard, we will reverse a conviction only if the evidence was “so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant’s guilt.” *Id.*

¶ 12 At the outset, the State urges us to reject defendant’s contention that the evidence was insufficient to establish that the Ambrose were a street gang because defendant did not make that argument in the trial court. The State acknowledges that, “when a defendant makes a challenge to the sufficiency of the evidence, his or her claim is not subject to the waiver rule and may be raised for the first time on direct appeal.” *People v. Woods*, 214 Ill. 2d 455, 470 (2005); see also *People v. Lashley*, 2016 IL App (1st) 133401, ¶ 23 (“Whether th[e] evidence was sufficient to prove \* \* \* an essential element of the State’s case \* \* \* is not an issue that defendant was required to raise below.”). Despite this well-settled rule, the State argues that a defendant may not support a sufficiency challenge on appeal with a theory that he did not advance in the trial court. But the only Illinois decision that the State cites for this proposition is readily distinguishable. In *People v. Brown*, 11 Ill. App. 3d 67, 72 (1973), the court held that a defendant who had been convicted of voluntary manslaughter could not argue, for the first time on appeal, that he had acted in self-defense. That rule makes sense because self-defense is an affirmative defense that a defendant must “specifically raise” before the burden of disproving it shifts to the State. *People v. Bardsley*, 2017 IL App (2d) 150209, ¶¶ 17, 23. If a defendant does not

affirmatively raise self-defense at trial, the State cannot be expected to rebut it. See *id.* ¶ 22 (noting that, under a contrary rule, “the State would have to disprove *every* affirmative defense of which even ‘slight evidence’ exists or risk a *post hoc* reexamination of the evidence for new potential defenses on appeal”). By contrast, a defendant is required to do nothing more than plead not guilty to put the State on notice of its burden to prove every element of a charged offense. Thus, even though defendant did not argue at trial that the evidence failed to establish that the Ambrose were a street gang, it remained the State’s burden to prove that element beyond a reasonable doubt. Accordingly, defendant’s appellate challenge to the sufficiency of the evidence with respect to the street gang element, like any other sufficiency challenge, “is not subject to the waiver rule and may be raised for the first time on direct appeal.” *Woods*, 214 Ill. 2d at 470.

¶ 13 The State further contends that defendant did not merely fail to contest whether the Ambrose were a street gang, but that he affirmatively conceded that fact. The State cites several instances during trial where either defense counsel or defendant referred to (or did not object to the State’s reference to) the Ambrose as a “street gang.” In one such instance, defense counsel argued, in his oral motion for a directed verdict at the close of the State’s case, that the only evidence that defendant “was a gang member” was Detective Young’s testimony that defendant admitted to being “part of an Ambrose street gang.” In another instance, defense counsel did not object when the State repeatedly referred to the “Ambrose street gang” when questioning defendant about the group and his membership in it. Defendant answered these questions (such as whether his knight tattoo was “a gang tattoo for the Ambrose street gang,” and whether the

“Ambrose street gang controlled” 18th Street) without disputing the premise that the Ambrose were a street gang.<sup>2</sup>

¶ 14 The State argues that these references constitute judicial admissions by defendant that the Ambrose were a statutorily defined street gang. “[J]udicial admissions are formal concessions or stipulations that withdraw a fact from issue and dispense [with] the need [for] proof of the fact.” *Knauerhaze v. Nelson*, 361 Ill. App. 3d 538, 559 (2005). Whether an in-court statement should be deemed a judicial admission “depends upon the circumstances of the individual case” and “the context in which it” was made. *Lowe v. Kang*, 167 Ill. App. 3d 772, 777 (1988). To constitute a judicial admission, a statement “must clearly and unequivocally admit to the fact that is being removed from issue.” *Knauerhaze*, 361 Ill. App. 3d at 559; see also *Lowe*, 167 Ill. App. 3d at 780 (concluding that attorney’s statement in closing argument was a judicial admission because it “unambiguously” conceded a fact at issue). Viewing the relevant statements in context, it is apparent that the parties’ references to the Ambrose as a “street gang” employed the term in its colloquial sense. The statute, however, defines the term street gang with “great particularity.” *People v. Beck*, 2019 IL App (1st) 161262, ¶ 20. And as we have previously recognized, it is important to distinguish the “plain and ordinary meaning” of that term from its “specific [statutory] definition.” *People v. Lozano*, 2017 IL App (1st) 142723, ¶ 43. In light of that distinction, we cannot say that defense counsel’s references to the Ambrose as a “street gang” (or his failure to object to the State’s similar references) amounted to clear and unequivocal admissions that the Ambrose were a street gang as statutorily defined.

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<sup>2</sup> The State cites a handful of additional examples of a similar nature. The State also cites several instances of the parties referring to the Ambrose as a “gang,” but it does not explain how such comments amount to a concession that the Ambrose were a “street gang.”

¶ 15 We also reject the State’s related contention that the doctrine of invited error bars defendant from arguing that the evidence did not establish that the Ambrose were a street gang because he referred to the Ambrose as a “street gang” at trial and did not request that the jury be instructed on the statutory definition of that term. “Under the doctrine of invited error, an accused may not request to proceed in one manner [at trial] and then later contend on appeal that the course of action was in error.” *People v. Carter*, 208 Ill. 2d 309, 319 (2003). In *Carter*, for instance, our supreme court held that the defendant could not challenge the trial court’s failure to give a lesser-included offense instruction where the defendant himself had “unequivocally opposed the giving of [the] instruction.” *Id.* Likewise, in *People v. Villarreal*, 198 Ill. 2d 209, 227-28 (2001), the court held that a defendant who requested the use of particular verdict forms could not argue on appeal that the forms were improper. And in *In re Detention of Swope*, 213 Ill. 2d 210, 217 (2004), the court held that a litigant who “agreed” to proceed by way of deposition could not argue on appeal that the use of depositions was improper. In each of these cases, the court found that a defendant’s deliberate decision to proceed in a particular manner at trial prohibited him from later challenging the propriety of that course of action on appeal. Here, by contrast, neither defendant’s references to the Ambrose as a “street gang” nor his failure to request a jury instruction on the definition of that term can be considered a deliberate and unequivocal decision to relieve the State of its burden of proof on that issue.

¶ 16 We thus turn to the merits. To reiterate, defendant contends that the evidence was insufficient to prove that the Ambrose were a street gang. A street gang is statutorily defined as “any combination \* \* \* of 3 or more persons with an established hierarchy that \* \* \* engages in a course or pattern of criminal activity.” 740 ILCS 147/10 (West 2018). A course or pattern of



criminal activity means either (1) the commission of two or more gang-related criminal offenses (at least one of which was a felony) within five years of each other, or (2) at least one act of criminal defacement of property with a sign or symbol intended to identify the gang. *Id.* Defendant argues that the evidence failed to establish either that the Ambrose have an established hierarchy or that the Ambrose have committed the requisite criminal acts necessary to show a course or pattern of criminal activity. Viewing the evidence in the light most favorable to the State, and drawing all reasonable inferences from that evidence in the State's favor, we conclude that the evidence was insufficient to support a finding that the Ambrose have an established hierarchy.<sup>3</sup>

¶ 17 A hierarchy is commonly defined as “a body of persons in authority” or “the classification of a group of people according to ability or to economic, social, or professional standing.” Merriam-Webster's Collegiate Dictionary 546 (10th ed. 1998). In other words, a hierarchy may refer either to an organization's leadership or to its system for ranking members according to their status or authority within the group. In cases where we have found or assumed that the evidence was sufficient to demonstrate that a gang had an established hierarchy, the record included testimony about the gang's leadership or organizational structure. See, e.g., *People v. Beck*, 2019 IL App (1st) 161626, ¶ 8 (defendant's reference to gang's “chief” and statement that he served as gang's “chief of the shorties”); *People v. Murray*, 2017 IL App (2d) 150599, ¶¶ 6, 82 (expert testimony about gang's “hierarchy,” including that a particular member “was so low in the hierarchy that he would not be permitted by the gang to carry a gun”); *People v. Lozano*, 2017 IL App (1st) 142723, ¶ 10 (expert testimony that gang had “well-structured

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<sup>3</sup> In light of this conclusion, we need not consider whether the evidence was sufficient to establish that the Ambrose have engaged in a course or pattern of criminal activity.

hierarchy that [was] ‘almost like a corporation,’” including “a nation chief, treasurer, enforcer, counsel, and a board of high ranking members”); *People v. Jamesson*, 329 Ill. App. 3d 446, 460 (2002) (expert testimony about “the hierarchy and structure” of the gang, “which include[d] a president and a type of treasurer”).

¶ 18 In stark contrast, the record here is devoid of any evidence or testimony about the Ambrose’s leadership or organizational structure. Detective Young, who was not a gang expert, merely recounted defendant’s statement that he was a member of the gang and that his various tattoos represented either the gang or its territory. Mateo testified about the gang’s territory and its violent rivalry with the Satan Disciples, as well as the prevalence of gang graffiti in the neighborhood where she grew up. Defendant testified about the gang’s symbols and territory and explained that, before a person joined or left the gang, other gang members would beat that person up. Even viewed in the light most favorable to the State, this testimony cannot support a finding that the Ambrose had an established hierarchy.

¶ 19 The State cites no direct evidence or testimony demonstrating that the Ambrose had an established hierarchy. Instead, the State argues that the jury could have reasonably inferred that the Ambrose had an established hierarchy from defendant’s testimony about the ritual of beating up entering and exiting members. But the State makes no attempt to explain how the existence of a gang ritual reasonably supports an inference that the gang has a leadership structure or ranks its members in terms of status or authority. It is true that we must draw all reasonable inferences in favor of the State, but such inferences must be based on at least “*some* evidence” in the record and not merely on “conjecture or assumption.” (Emphasis in original.) *People v. Laubscher*, 183 Ill. 2d 330, 335-36 (1998). Although “[t]he line between a reasonable inference and speculation

can be difficult to locate,” *People v. Sims*, 2014 IL App (4th) 130568, ¶ 138, any finding that the Ambrose had an established hierarchy based solely on the fact of the “beat-in” and “beat-out” ritual would fall well on the side of speculation rather than reasonable inference. Nor can we say that jurors’ common sense could supply the necessary inference. See David Heinzmann, *Leaderless Chicago street gangs vex police efforts to quell violence*, Chicago Tribune, July 29, 2016, available at <https://www.chicagotribune.com/news/breaking/ct-chicago-violence-gangs-20160728-story.html> (discussing how many modern gangs lack leadership and hierarchical structures).

¶ 20 Finally, the State argues that various witnesses’ references to the Ambrose as a “street gang” were sufficient to prove that the Ambrose were a street gang within the meaning of the statute. The State relies on decisions holding that a witness’s testimony that a defendant was armed with a gun while committing a robbery is sufficient to prove the defendant guilty of armed robbery with a firearm, without the need for evidence that the gun satisfied the statutory definition of the term firearm. See, e.g., *People v. Wright*, 2017 IL 119561; *People v. Washington*, 2012 IL 107993. Those decisions, however, are distinguishable both factually and legally. Factually, the witnesses in *Wright* and *Washington* testified unequivocally that they observed the defendant with a gun. See *Wright*, 2017 IL 119561, ¶ 76; *Washington*, 2012 IL 107993, ¶¶ 35-36. Here, by contrast, Detective Young testified that defendant admitted to being a member of the “Ambrose street gang,” but he conceded that those were not defendant’s exact words. Mateo and defendant, meanwhile, responded to questions about the “Ambrose street gang,” but they never directly stated their belief that the Ambrose were a street gang. Regardless, *Wright* and *Washington* are legally distinguishable because we have held that, due to the “great

particularity” with which the term street gang is defined under the statute, only an expert with “specialized knowledge” may provide opinion testimony concerning a gang’s status as a street gang. *Beck*, 2019 IL App (1st) 161626, ¶ 20. Thus, even if Young, Mateo, or defendant had purported to testify that the Ambrose were a street gang, their lay opinions alone would have been insufficient to establish the street gang element of the offense. *Id.* ¶¶ 20, 38.

¶ 21 Because the evidence, viewed in the light most favorable to the State, was insufficient to prove that defendant was a member of a street gang, we must reverse his conviction for unlawful possession of a firearm by a street gang member. In light of this holding, we need not address defendant’s separate contention that the statute defining the offense is unconstitutional. See *Beck*, 2019 IL App (1st) 161626, ¶ 21. As noted above, defendant does not challenge his separate convictions for unlawful use or possession of a weapon by a felon and aggravated unlawful use of a weapon. The circuit court did not sentence defendant on those convictions because it concluded that they merged with his conviction for unlawful possession of a firearm by a street gang member. Having reversed the latter conviction, we remand to the circuit court for sentencing on defendant’s remaining convictions. See *id.* ¶¶ 33-36.

¶ 22

### III. CONCLUSION

¶ 23 For the foregoing reasons, we reverse defendant’s conviction for unlawful possession of a firearm by a street gang member and remand to the circuit court for resentencing on defendant’s remaining convictions.

¶ 24 Reversed and remanded.