

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).

2019 IL App (4th) 160781-U

NO. 4-16-0781

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

April 17, 2019

Carla Bender

4th District Appellate Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
KYJUAN K. DORSEY,)	No. 15CF1593
Defendant-Appellant.)	
)	Honorable
)	Thomas J. Difanis,
)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court. Justices DeArmond and Turner concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court affirmed, concluding (1) the State presented sufficient evidence at trial for a jury to convict defendant and (2) defendant's aggregate sentence did not violate the proportionate penalties clause of the Illinois Constitution.
- ¶ 2 In October 2015, the State charged defendant, Kyjuan K. Dorsey, with (1) aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2014)), (2) aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West Supp. 2015)), and (3) first degree murder predicated on aggravated discharge of a firearm (720 ILCS 5/9-1(a)(3) (West Supp. 2015)). The charges arose from a drive-by shooting that occurred on October 19, 2015, on West Beardsley Avenue in Champaign, Illinois. At the time of the shooting, defendant was 19 years old.

¶ 3 Following an August 2016 jury trial, a jury found defendant guilty of all charges. In September 2016, the trial court imposed a 25-year sentence for aggravated battery with a firearm to run consecutively with a 55-year sentence for first-degree murder.

¶ 4 Defendant appeals, arguing (1) the State failed to prove him guilty beyond a reasonable doubt and (2) his aggregate 80-year sentence is unconstitutional under the proportionate penalties clause of the Illinois Constitution (constitution).

¶ 5 I. BACKGROUND

¶ 6 In October 2015, the State charged defendant with (1) aggravated discharge of a firearm (720 ILCS 5/24-1.2(a)(2) (West 2014)) in the direction of Marquise Burnett; (2) aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West Supp. 2015)), causing bodily harm to Burnett; and (3) first degree murder predicated on aggravated discharge of a firearm (720 ILCS 5/9-1(a)(3) (West Supp. 2015)) in the direction of Burnett, thereby causing the death of Jeremy D. O'Neal.

¶ 7 A. Defendant's Jury Trial

¶ 8 In August 2016, the jury heard the following evidence.

¶ 9 1. *Demetrius Lane*

¶ 10 Demetrius Lane testified that on October 19, 2015, he picked up O'Neal and defendant in his red Mercury. Lane, O'Neal, and defendant were all friends. Lane testified O'Neal sat in the front passenger seat and defendant sat behind O'Neal in the back seat.

¶ 11 After picking up O'Neal and defendant, Lane drove to Sunset Drive in Champaign to visit a friend, Jamar Lewis. Lane testified that when they arrived at Lewis's residence he was not home but Jamie Brown was and they talked to her for a few minutes then listened to music for 30 minutes while waiting for Lewis. Eventually, when Lewis failed to show up, they left

Sunset Drive and turned onto West Beardsley Avenue. Lane testified he did not have a plan to go anywhere in particular and no one in the vehicle asked to go to West Beardsley Avenue, but he admitted that he knew Mark Washington "used to stay there." While in the Mercury, Lane observed O'Neal with a black handgun.

¶ 12 Once Lane turned onto West Beardsley Avenue, he heard gunshots coming from the left side of the street. He ducked but kept driving and crashed head on into an oncoming vehicle. When he crashed his vehicle, the airbags deployed and knocked him out. He testified that when he came to, he got out of his vehicle and ran. As he ran, he looked behind him and saw defendant not far behind. According to Lane, he and defendant ran back to Sunset Drive. Lane testified he never saw anyone fire a gun.

¶ 13 The day after the shooting, Lane voluntarily provided a statement to police. Lane told police that on the day of the shooting, he was with O'Neal but failed to mention defendant, and he told police he did not see anyone with a gun. Lane told police he went to the residence on Sunset Drive alone.

¶ 14 A month later, police pulled Lane over, and he agreed to give a second statement. In that statement, Lane identified defendant as the back seat passenger. Lane also told police that on the day of the shooting, O'Neal carried a black handgun. Lane gave the statement after police told him that he could be a "victim, defendant, or a witness" to the shooting. Lane's statement led to defendant's arrest.

¶ 15 At trial, Lane testified that he told police what happened on October 19, 2015, after the police said, "they already knew." Lane initially lied to police because he did not want to say anyone's name.

¶ 16 When he testified, Lane was awaiting trial on a pending felony charge (Champaign County case No. 16-CF-1010). Lane testified the charge happened months after Lane gave his statements to police. He denied that police made promises to him in return for his testimony.

¶ 17 *2. Burnett*

¶ 18 Burnett testified that he was walking by 610 West Beardsley Avenue on October 19, 2015, when a vehicle came around the corner and started shooting. He heard four shots and then someone shot him in the leg. He denied seeing who shot him.

¶ 19 *3. Brown*

¶ 20 Brown testified that on October 19, 2015, she lived on Sunset Drive in Champaign. Brown's boyfriend, Lewis, planned to buy Lane's vehicle, but when Lane came by, Lewis was not home. According to Brown, two other people were in Lane's vehicle. Brown testified O'Neal was in the front passenger seat and defendant was in the back seat. She also testified she saw a black handgun in O'Neal's lap. The three men stayed for less than three minutes.

¶ 21 Brown heard gunshots five minutes after the men left. She testified she left her children with a neighbor and ran toward West Beardsley Avenue to see what happened. Brown viewed the crash scene and returned home. She stated she never saw Lane or the back seat passenger after the shooting.

¶ 22 On cross-examination, Brown admitted she failed to pick defendant's photograph from a police lineup and that she failed to get a good look at the passengers in Lane's vehicle. Brown then denied she saw defendant in the vehicle because she did not remember his face.

¶ 23 *4. Barbara Wells*

¶ 24 At the time of the shooting, Barbara Wells was driving down West Beardsley Avenue when she heard three gunshots before she witnessed a two-vehicle accident. Wells testified six or seven people stood on the front porch of 610 West Beardsley Avenue. After the accident, Wells observed "a kid get out of the passenger door" of the Mercury and run. Wells testified the passenger was a young black male. Wells did not see anyone else get out of the Mercury.

¶ 25 Wells testified after the crash she slammed on her breaks, pulled into a driveway, backed out, and took off the other way. She saw a man nearby pointing a gun and heard three more shots as she pulled away.

¶ 26 *5. Paul Barnes*

¶ 27 Paul Barnes testified that on October 19, 2015, he was sitting on his porch at 513 West Beardsley Avenue in Champaign. He observed a burgundy vehicle turn "pretty fast" and speed down West Beardsley Avenue. Barnes then heard three or four gunshots, followed by three or four more gunshots after a pause. Barnes did not see who fired the shots.

¶ 28 *6. Stipulation as to O'Neal's Cause of Death*

¶ 29 The parties stipulated that on October 19, 2015, O'Neal "suffered a gunshot wound and was found unresponsive in the front passenger seat of a Mercury." Paramedics transported O'Neal to the hospital, where a doctor determined he suffered a fatal gunshot wound to the head. Forensic pathologist Shiping Bao performed the autopsy and found O'Neal "suffered a perforating gunshot wound to the head." Bao found a "contact wound" entrance at O'Neal's "right occipital scalp six inches below the top of the head and one inch to the right of the posterior midline." "The wound track passe[d] upwards from right to left and back to front."

"The bullet exited the left temple two inches below the top of the head and three inches to the left of the anterior midline."

¶ 30

7. Physical Evidence

¶ 31 Police located the crash site on West Beardsley Avenue. Upon further investigation of the crash site, police observed the rear driver's side window of the Mercury was shattered and shards of tempered glass strewn in the road. Police also found the driver's seat extended back and determined that a round fired from the rear passenger seat inside the vehicle penetrated the driver's headrest, and proceeded toward the rear driver's side window.

¶ 32 Police located the bullet believed to have penetrated O'Neal's head inside the front passenger seat airbag. Because an airbag inflates and deflates "in fractions of seconds[,] " police determined that O'Neal was likely shot at the same moment the airbag inflated during the crash.

¶ 33 Police found a black handgun and a camouflage handgun in the Mercury. The camouflage handgun ended up by the intersection of cushions in the Mercury's front passenger seat. The camouflage handgun was in firing condition. The bullet from the airbag and three cartridge casings in the Mercury were from the camouflage handgun. Two of the casings were located on the rear passenger floorboard and the third casing was on the front passenger floorboard.

¶ 34 Police found a bullet in the Mercury's front passenger window frame. Police determined the bullet did not come from either the black handgun or the camouflage handgun found inside the vehicle. Police determined that the bullet was "likely related" to a previous shooting.

¶ 35 An expert in forensic science conducted tests on the firearms and other items found in the Mercury, and excluded defendant's deoxyribonucleic acid (DNA) from the black

handgun and the camouflage handgun. The expert found O'Neal's DNA on the front of the camouflage handgun's slide. The expert found defendant's palm print on the Mercury's hood and his DNA on an open iced-tea can found in the pocket behind the front passenger seat.

¶ 36 Police discovered two cigarette butts in the rear-passenger door. One of the cigarette butts exhibited a mixture of DNA profiles from two people. A DNA database search detected an "association" to Xavier Singleton and Michael Nichols. Lane testified Nichols previously rode in his vehicle and probably smoked a cigarette but not in October 2015. Lane also indicated that Singleton "probably was with Michael Nichols."

¶ 37 *8. Miatta Echetebe*

¶ 38 Miatta Echetebe dated O'Neal at the time of his death. She described defendant and O'Neal as "best friends" and testified O'Neal considered defendant to be "like a brother."

¶ 39 About four hours after the shooting, defendant called Echetebe. Defendant asked Echetebe if she was with O'Neal and when she said no, he hung up. The next day, defendant called back and said that his head was "spinning" while trying "to figure out what happened." On the day of the shooting, defendant told Echetebe that he had been with O'Neal earlier in the day.

¶ 40 *9. Reshaun Dorsey*

¶ 41 Reshaun Dorsey, defendant's brother, testified that on October 19, 2015, he lived over an hour away in Gridley, Illinois. The day after the shooting, Reshaun picked defendant up from his home on Dodson Drive in Urbana, Illinois, and drove him to Gridley. Reshaun testified when he picked defendant up he was unaware of the shooting. Defendant stayed with Reshaun for about a week. Defendant told Reshaun about the shooting when Reshaun drove him back to Urbana. Subsequently, Reshaun spoke with police.

¶ 42

10. *Defendant's Pretrial Statements*

¶ 43

Police determined defendant resided at 203 South Dodson Drive in Urbana.

Police left business cards at defendant's address with instructions to call police but police never received any calls from defendant. Eleven days after the shooting, police located defendant at the Lincoln Lodge Hotel in Urbana. Defendant told the police he was aware the police were trying to contact him and that he tried to call the number on the card.

¶ 44

Defendant told police that "he spent almost every day" with O'Neal at defendant's house or at O'Neal's house. Defendant admitted to police that he spent the morning of October 19, 2015, with O'Neal. Defendant claimed he dropped O'Neal back off at his house at noon on October 19, 2015, because Reshaun picked him up around noon that day and took him to Gridley.

¶ 45

Police told defendant they knew he was in the car with O'Neal when he died. Subsequently, defendant sat "in silence for a moment." Police then told defendant that they did not believe he knew that O'Neal was going to die. Defendant then stated that he was supposed to be at O'Neal's funeral while they were speaking.

¶ 46

Officers also questioned defendant about why he was staying at a hotel instead of his residence. Defendant responded that he had "a life" and questioned whether the police wanted him to spend all day at home. The police responded that defendant just told them he spent his time at his home or at O'Neal's house.

¶ 47

Officers asked defendant about his beliefs concerning how he became a suspect, and defendant accused Lane of setting him up. Defendant also told police "the streets were saying" that Mark Washington, Burnett's half brother, shot O'Neal. Defendant never admitted to being in Lane's vehicle on the day of the shooting.

¶ 48

11. *Jury's Verdict*

¶ 49 The jury found defendant guilty on all three charges. The jury also answered in the affirmative the question of whether defendant personally discharged a firearm that proximately caused O'Neal's death.

¶ 50

B. Sentencing Hearing

¶ 51 At a September 2016 sentencing hearing, the trial court heard evidence in aggravation and mitigation. Defendant's presentence investigation report revealed two prior juvenile delinquency adjudications for theft and a delinquency adjudication for burglary. A month before the shooting defendant completed his parole period on the burglary adjudication.

¶ 52

Defendant grew up in foster care. He attended school through the 10th grade. Defendant denied affiliations with street gangs; however, evidence at the preliminary hearing established defendant and O'Neal were "associated" with the Norff Bangers gang who were rivals with Mark Washington's Rock Block gang at 610 West Beardsley Avenue. Correctional officers testified about defendant engaging in multiple physical altercations while in jail. The trial court cited defendant's "very young" age and his history growing up in foster care as mitigating factors. The court recognized that defendant's history of juvenile delinquency involved property crimes. In aggravation, the court cited the need for a sentence to deter similarly situated individuals. The court sentenced defendant to 25 years' imprisonment for aggravated battery with a firearm to run consecutively to his 55-year sentence for first-degree murder.

¶ 53

C. Posttrial Proceedings.

¶ 54

Defendant filed a motion to reconsider his sentence. Defendant claimed his sentence was excessive and that the trial court violated the proportionate penalties clause of the

constitution (Ill. Const. 1970, art. I, § 11). The court denied the motion stating it considered the circumstances surrounding the offense, defendant's juvenile adjudication history, and defendant's age.

¶ 55 This appeal followed.

¶ 56 II. ANALYSIS

¶ 57 On appeal, defendant argues (1) the State failed to prove him guilty beyond a reasonable doubt and (2) his aggregate 80-year sentence is unconstitutional under the proportionate penalties clause of the constitution. We turn first to the sufficiency of the evidence.

¶ 58 A. Sufficiency of the Evidence

¶ 59 When a reviewing court considers a challenge to the sufficiency of the evidence, it must determine " 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis omitted.) *People v. Cunningham*, 212 Ill. 2d 274, 278, 818 N.E.2d 304, 307 (2004) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "It is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts." *People v. Bradford*, 2016 IL 118674, ¶ 12, 50 N.E.3d 1112. "Accordingly, a reviewing court will not substitute its judgment for the fact finder on questions involving the weight of the evidence or the credibility of the witnesses." *Id.* When, however, the evidence is so improbable and unsatisfactory that it creates a reasonable doubt as to defendant's guilt, the conviction must be overturned. *Id.*

¶ 60 Defendant argues no rational trier of fact could find him guilty beyond a reasonable doubt based on Lane's testimony placing him in the vehicle at the time of the shooting

and the physical evidence tying him to the shooting. The State maintains that in this credibility contest the jury, as the fact finder, believed Lane along with the physical evidence and properly convicted defendant of all charges. We agree with the State.

¶ 61 Defendant claims bias because Lane was awaiting trial on a pending felony charge when he testified at defendant's trial. However, the pending felony charge arose after Lane gave a full statement to police about defendant's presence in his vehicle on the day of the shooting. Defendant also calls into question Lane's credibility, asserting Lane had a motive to lie to police because, after police told Lane he could be a "victim, defendant, or a witness" to the shooting, he identified defendant as the back seat passenger in the vehicle during the shooting. Specifically, defendant asserts Lane's testimony should not be trusted because testimony of an accomplice witness is inherently weak, given the danger that such testimony stems from fear, threats, or hopes of leniency. *People v. Williams*, 147 Ill. 2d 173, 232, 588 N.E.2d 983, 1006 (1991). However, "the testimony of an accomplice witness, whether corroborated or uncorroborated, is sufficient to sustain a criminal conviction if it convinces the jury of the defendant's guilt beyond a reasonable doubt." *People v. Tenney*, 205 Ill. 2d 411, 429, 793 N.E.2d 571, 583 (2002).

¶ 62 Here, while Lane initially gave a different account, eventually he placed defendant in the back seat of the vehicle at the time of the shooting, and other witnesses and physical evidence corroborated Lane's testimony. The evidence together tied defendant to the shooting.

¶ 63 Brown testified that shortly before the shooting, two other men were in the vehicle with Lane, including O'Neal in the front passenger seat and defendant in the back seat, although she did not remember defendant's face. Eyewitness Wells saw only one young black

male exit the passenger door of the Mercury after the crash. Upon arrival at the scene, police found O'Neal dying in the front passenger seat. Police discovered defendant's DNA on an open iced-tea can in the pocket behind the front passenger seat. Police also found defendant's palm print on the hood of the Mercury. Defendant admitted he spent time with O'Neal on the day of the shooting. Specifically, defendant stated he viewed O'Neal like a brother and "spent almost every day" with O'Neal. Defendant and O'Neal were also friends with Lane and they all would "hang out together."

¶ 64 After the shooting, defendant called Echetebe in an effort to find O'Neal. The next day, defendant called back and said his head was "spinning" while trying "to figure out what happened." Defendant attempted to create an alibi when he told police his brother Reshaun picked him up around noon on the day of the shooting. However, Reshaun told police he picked his brother up the day after the shooting and took defendant to Reshaun's house in Gridley, where defendant remained until a week later.

¶ 65 After defendant's return, police eventually found him at a hotel near defendant's home. Defendant knew police wanted to speak with him and claimed that he tried to contact police. However, the police never received a call from defendant. During his police questioning, defendant sat "in silence for a moment" after police informed him that police knew he was in the vehicle with O'Neal when he died. Police then told defendant they did not believe he knew O'Neal was going to die, and defendant made only a nonresponsive remark about missing O'Neal's funeral due to being at the police station for questioning. Defendant never admitted or denied being in Lane's vehicle during the shooting.

¶ 66 Defendant points to DNA associations with two other men, Singleton and Nichols, found on a cigarette butt in the Mercury as proof that either man was present in the

Mercury at the time of the shooting. As explained at trial, the DNA association failed to show when the men occupied the Mercury, and Lane connected Singleton and Nichols with being in the Mercury prior to October 2015.

¶ 67 Defendant acknowledges that the bullet that killed O'Neal came from the camouflage handgun but questions the State's revised theory explaining how O'Neal suffered the fatal wound. While police initially believed the bullet found in the window frame of the passenger door of the Mercury killed O'Neal, they eventually confirmed that neither firearm recovered inside the Mercury was the source of the bullet in the window frame. Police spoke with Lane and determined the bullet found in the window frame stemmed from a previous shooting.

¶ 68 Physical evidence presented at trial established that the bullet that killed O'Neal came from the back seat and struck O'Neal at the same moment the airbag inflated during the crash. Police found two casings from the camouflage handgun on the back seat floorboard, but one of its casings ended up on the front seat floorboard. The camouflage handgun itself ended up in the Mercury's front passenger seat. Police found the camouflage handgun on O'Neal's seat upon removing O'Neal from the Mercury.

¶ 69 Based on the evidence, a jury could find beyond a reasonable doubt that (1) a head-on collision flung forward the back seat passenger toward O'Neal's body, which was being cushioned by the deployed airbag; (2) the back seat passenger dropped the camouflage handgun while contacting and shooting O'Neal's head during the crash; and (3) the camouflage handgun came to rest behind O'Neal's body.

¶ 70 Initially, defendant told police that Lane set him up and that he heard Washington shot O'Neal. In his reply brief, defendant suggests an alternative theory to the State's theory that

does not involve a setup. Specifically, defendant asserts that after the crash Washington walked up to an unconscious O'Neal in the front passenger seat of the Mercury with his window already rolled down and the airbag deployed underneath O'Neal's head. Washington then reached into the vehicle with the camouflage handgun, pressed the muzzle to O'Neal's head, and fired the single shot through O'Neal's skull and into the airbag. Washington then dropped the handgun on O'Neal's seat and walked away.

¶ 71 Defendant asserts the evidence supports his alternative theory where Wells and Barnes testified to hearing more shots after the initial shots and the crash. Also, defendant argues forensic evidence showed that the camouflage handgun contained O'Neal's DNA and a second unknown profile, but that it excluded defendant's DNA.

¶ 72 Here, no eyewitness testimony or physical evidence placed Washington near the Mercury after the crash. Instead, Wells testified to seeing six or seven people standing on the front porch of 610 West Beardsley Avenue, a place where Washington frequently hung out.

¶ 73 "Where circumstantial evidence relied upon to support the defense that someone other than the defendant committed the crime is unsatisfactory, based upon mere surmise or possibility, a hypothesis of innocence may be rejected by the trier of fact." *People v. Hall*, 194 Ill. 2d 305, 332, 743 N.E.2d 521, 537 (2000). "Moreover, the trier of fact is not required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *Id.*

¶ 74 In the end, the jury performed its role as fact finder and determiner of credibility. Accordingly, we conclude the State presented sufficient evidence for the jury to find defendant guilty beyond a reasonable doubt.

¶ 75 B. Proportionate Penalties Clause of the Illinois Constitution

¶ 76 Lastly, defendant argues his aggregate 80-year sentence is unconstitutional under the proportionate penalties clause of the constitution (Ill. Const. 1970, art. I, § 11). Defendant contends the trial court's imposition of a *de facto* life sentence shocks the moral sense of the community given the facts of this case, including his youth and the other mitigating factors. The State maintains that defendant's sentence comports with the proportionate penalties clause where defendant fails to demonstrate that, as applied to his circumstances, the sentence is so wholly disproportionate to his offenses that it shocks the moral sense of the community. We agree with the State.

¶ 77 Defendant asserts two mandatory firearm enhancements (730 ILCS 5/5-8-1 (West 2014)), the consecutive sentencing statute (730 ILCS 5/5-8-4(d)(1) (West 2014)), and the truth-in-sentencing statute (730 ILCS 5/3-6-3(a)(2)(i)-(iv) (West 2014)) required the sentencing court to impose a mandatory *de facto* life sentence in violation of the proportionate penalties clause of the constitution. The proportionate penalties clause of the constitution provides that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. "Since the constitutionality of a statute presents a question of law, we review this issue *de novo*." *People v. Garvin*, 219 Ill. 2d 104, 116, 847 N.E.2d 82, 89 (2006).

¶ 78 Defendant's aggregate term of 80 years comprises consecutive terms of 55 years for first-degree murder and 25 years for aggravated battery with a firearm. Under the truth-in-sentencing statute, defendant must serve 100% of the 55 years imposed for first-degree murder and 85% of the 25 years imposed for aggravated battery with a firearm. 730 ILCS 5/3-6-3(a)(2)(i)-(iv) (West 2014). Defendant will have to serve a minimum of 76 years before becoming eligible for mandatory supervised release at the age of 95.

¶ 79 Defendant's claim is an as-applied challenge. While individually the statutes are not unconstitutional, in the aggregate they are subject to an as applied challenge. *People v. Harris*, 2018 IL 121932, ¶ 37, __N.E.3d __. "[A]n 'as-applied' challenge requires defendant to show the statute violates the constitution as it applies to him." *Garvin*, 219 Ill. 2d at 117. Here, defendant argues that based on his age of 19 at the time of the shooting and his lack of an adult criminal record, the trial court should not have sentenced him to a *de facto* life sentence.

¶ 80 Defendant relies on the United States Supreme Court decision in *Miller v. Alabama*, 567 U.S. 460, 489 (2012) (a mandatory sentence of life without parole for any offender younger than 18 years of age violates the proportionality requirement). Following *Miller*, our supreme court held that a sentencing judge " 'must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles.' " *People v. Reyes*, 2016 IL 119271, ¶ 3, 63 N.E.3d 884 (quoting *Miller*, 567 U.S. at 489). Defendant claims the reasoning from *Miller* and *Reyes* should extend to his circumstances as a 19-year-old young adult. Specifically, defendant asserts *Miller* applies to his *de facto* life sentence. See *id.*

¶ 10.

¶ 81 Defendant cites Illinois cases that have extended juvenile sentencing provisions to young adult offenders. See *People v. House*, 2015 IL App (1st) 110580, 72 N.E.3d 357; *People v. Harris*, 2016 IL App (1st) 141744, 70 N.E.3d 718.

¶ 82 In *House*, the trial court sentenced defendant to natural life imprisonment. *House*, 2015 IL App (1st) 110580, ¶ 82. The 19-year-old defendant argued his sentence violated the proportionate penalties clause of the constitution due to his "minimal involvement in the commission of the crimes[,]" in addition to his young age. *Id.* ¶ 80. "Because defendant acted as a lookout during the commission of the murders, he was found guilty under a theory of

accountability, which mandates that all participants of common design are considered equally responsible." *Id.* ¶ 82. The reviewing court stated "[g]iven defendant's age, his family background, his actions as a lookout as opposed to being the actual shooter, and lack of any prior violent convictions, we find that defendant's mandatory sentence of natural life shocks the moral sense of the community." *Id.* ¶ 101. The court found the proportionate penalties clause was unconstitutional as applied to the defendant and remanded for a new sentencing hearing. *Id.* ¶ 102.

¶ 83 Our case is distinguishable from *House* where the trial court did not find defendant guilty under an accountability theory. The jury found defendant shot Burnett, and shot and killed O'Neal. Furthermore, the trial court took into consideration defendant's age and minimal criminal history before imposing sentence.

¶ 84 Defendant also cites the decision in *Harris*, 2016 IL App (1st) 141744, ¶¶ 1-2, to support his argument that juvenile sentencing provisions apply to young adults where the reviewing court found an aggregate 76-year sentence violated the proportionate penalties clause as applied to an 18-year-old. However, the Illinois Supreme Court recently reversed in part the appellate court's decision in *Harris*. *Harris*, 2018 IL 121932, ¶ 1.

¶ 85 In *Harris*, the supreme court held that it could not address defendant's as-applied challenge under the proportionate penalties clause because no evidentiary hearing took place and absent were findings of fact on how *Miller* applied to him as a young adult. *Id.* ¶ 40. The court stated, "a reviewing court is not capable of making an as-applied finding of unconstitutionality in the 'factual vacuum' created by the absence of an evidentiary hearing and findings of fact by the trial court." *Id.* ¶ 41 (quoting *People v. Minnis*, 2016 IL 119563, ¶ 19, 67 N.E.3d 272).

¶ 86 The defendant argued the record included sufficient information about his personal history to determine whether the evolving science on juvenile maturity and brain development applied to him, but the court concluded the record only contained basic information about defendant, primarily from the presentence investigation report. *Id.* ¶ 46. The court found defendant's as-applied challenge premature and more appropriately raised in a collateral proceeding. Accordingly, the court declined to remand the matter for an evidentiary hearing. *Id.* ¶¶ 46, 48.

¶ 87 Like in *Miller*, here, an evidentiary hearing to determine how *Miller* applied to defendant did not take place. Thus, we follow the supreme court and find that the record is insufficient to determine whether *Miller* applied to defendant. We further find defendant's claim better suited for resolution in a collateral proceeding and decline to remand this matter for an evidentiary hearing.

¶ 88 III. CONCLUSION

¶ 89 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2014).

¶ 90 Affirmed.