2019 IL App (5th) 150103-U

NO. 5-15-0103

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 11-CF-1418
	)	
DAMOND RIDDLESPRIGER,	)	Honorable
	)	Richard L. Tognarelli,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Boie* concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's conviction and sentence are affirmed where the prosecutor's closing and rebuttal arguments were not improper and did not constitute plain error; the evidence that a witness had dated the victim after she broke up with the defendant was not inadmissible; the circuit court's violation of Illinois Supreme Court 431(b) (eff. July 1, 2012) was not plain error; and the record on appeal is insufficient to consider the defendant's challenge of his sentence for violation of the Illinois Constitution's proportionate penalties clause and, therefore, is premature.

¶ 2 The defendant-appellant, Damond Riddlespriger, was charged by indictment with three counts of first-degree murder and one count of armed robbery with respect to the

*Justice Goldenhersh was originally assigned to participate in this case. Justice Boie was substituted on the panel subsequent to Justice Goldenhersh's retirement and has read the briefs and listened to the recording of oral argument.

shooting death of Marlon Poindexter. A jury found him not guilty of felony murder and armed robbery but guilty of one merged count of first-degree murder (720 ILCS 5/9-1(a)(1), (2) (West 2010)). He was sentenced by the Madison County circuit court to 50 years' imprisonment. This is a direct appeal of his conviction and sentence.

¶ 3 I. BACKGROUND

¶ 4 Before the trial, the State filed a motion *in limine*, requesting to introduce evidence of the defendant's motive from the testimony of Aloysia Elliott, an ex-girlfriend of both the defendant and Poindexter. The State asserted that Elliott would testify that, approximately two years prior to the murder, she ended a six-month dating relationship with the defendant and began dating Poindexter shortly thereafter; their two-year relationship ended in 2011. She would also testify that the defendant tried to rekindle their relationship, but she was not interested, and that during her relationship with Poindexter, the defendant confronted him regarding his mistreatment of her. The defendant responded with a motion *in limine* requesting that the trial court bar the State from presenting evidence that the defendant and Poindexter were in an ongoing disagreement over Elliott, asserting that the testimony would be hearsay.

¶ 5 On October 15, 2014, a hearing was held on the motions. The trial court granted the defendant's motion *in limine* with respect to not allowing Elliott to testify that she had heard that the defendant and Poindexter had an ongoing disagreement but allowed testimony that she had dated Poindexter after breaking up with the defendant.

¶ 6 A jury trial was held from January 12-15, 2015. During jury selection, the trial court stated to the potential jurors:

"THE COURT: Under Illinois Law we're required to determine *** your understanding of the presumption of innocence, and there are four principles that you must accept in order to serve on a criminal jury.

One is that the defendant is presumed innocent of the charges against him or her. In this case, him.

That before he can be convicted, number two, the State must prove him guilty beyond a reasonable doubt.

That the defendant is not—number three, not required to offer any evidence of his own. He may simply *** rely on that presumption of innocence.

And, four, that if the defendant chooses not to testify, that *** the fact that he doesn't testify cannot be used against him.

Are there any of you in the room *** this afternoon that disagree with any one of those four principles?

PROSPECTIVE JURORS: (Indicating.)

THE COURT: All right, let the record reflect that there has been no disagreement with these principles."

The State began the presentation of its case on January 13, 2015. In her opening statement, the prosecutor stated:

"A girl, a grudge, and a gunshot. On July 11, 2011, the defendant climbed into the back seat of Marlon Poindexter's car armed with a grudge and a gun. While the three other men inside that vehicle sat there talking, smoking weed, just hanging out, the defendant sat there in silence. He sat there in silence. He sat there mulling over his grudge, a grudge that burned deep inside of him until it finally consumed him and without warning he reached into his pocket, pulled out a chrome .22 caliber semi-automatic pistol, placed it to the back of Marlon's head and fired one shot executing the 22-year-old Marlon; a son, a young father."

¶ 7 The State presented the following evidence. On July 11, 2011, around 4 p.m., 9-1-1 calls reporting a shooting dispatched the police to an apartment building on Myrtle Street in Alton, Illinois. Police officer Andrew Pierson arrived at the scene and found an unconscious and bloodied person with a head wound sitting in the driver's seat of a four-door red vehicle, which was parked in front of an apartment building. There was also a shell casing on the front passenger seat of the vehicle. Several people had gathered at the scene, and Rausheeta Gates, Poindexter's girlfriend, was hysterically crying.

¶ 8 Detective Kurtis McCray testified that he received a surveillance video from the apartment building's property manager. The video showed two black males fleeing the scene in different directions at the time of the shooting. The manager also gave McCray a key fob and a single key that were found in a grassy area behind the apartments. The keys belonged to a white Pontiac Grand Am that was parked approximately a half block away from the crime scene. The Pontiac was registered to Adam Williams's girlfriend, Jackie Sandberg. Further investigation revealed that Williams was one of the males seen running in the surveillance video.

¶ 9 Police officer Marcus Pulido testified that, after responding to the scene, he learned that Byron Blake, also known as "Moo-Moo," was in the car at the time of the shooting. Pulido stated that he knew Blake from previous criminal investigations, and he was assigned to search for him. At 5:59 p.m., Pulido saw Blake walking near the workplace of his girlfriend, Aricka Fox. Blake agreed to accompany Pulido to the police station. Once there, Blake received and waived his *Miranda* rights and gave interviews to the police.

¶ 10 Byron Blake testified that he was serving a nine-year prison sentence for the unlawful delivery of a controlled substance, and that, in exchange for his truthful testimony, the State had agreed to reduce his sentence to seven years.

¶ 11 Blake testified that on the morning of July 11, 2011, he was at Fox's house. Around 2 p.m., he and Fox went to her cousin Angela Fleming's apartment on Myrle Street. When they arrived, Poindexter was outside, smoking marijuana and listening to

music in his vehicle. Blake stated that he had known Poindexter for 16 years and that they were friends. He and Fox went into Fleming's apartment to watch television.

¶ 12 Not long after this, Adam Williams, Williams's girlfriend, Jackie Sandberg, and the defendant pulled up to the apartment complex in Sandberg's white Pontiac Grand Am. They entered Williams's grandmother's apartment, which was below Fleming's apartment. Blake testified that he had known Williams and the defendant for a while, having played sports and gone to school with them.

¶ 13 Blake testified that he accompanied the defendant, Williams, and Sandberg in Sandberg's car to the Hit and Run gas station, where the defendant sold some marijuana. When they returned to the apartment building, Poindexter was still sitting in his car. Blake headed upstairs to change from the flip-flops that he was wearing into tennis shoes. Blake explained that he did this because he "thought [the defendant and Poindexter] were into it," and that if a fight were to occur, he wanted to assist Poindexter. He saw the defendant and Williams talking to Poindexter through his car window. Poindexter then asked Blake, who was standing on Fleming's balcony, if he wanted to smoke marijuana. Blake, Williams, and the defendant entered Poindexter's car. Poindexter remained in the driver's seat, Williams sat in the front passenger seat, the defendant sat in the seat behind Poindexter, and Blake sat in the seat behind Williams.

¶ 14 Everyone but the defendant smoked marijuana in the car for about an hour. Blake testified that no one was arguing and that he was "in [his] zone" and just looking out the window. He then turned his head and saw the defendant pointing a small-caliber semi-automatic gray and black gun at the back of Poindexter's head. One shot went off, and

Poindexter was injured. Williams exited the car and ran. Blake also exited the car and ran to Fleming's apartment; as he left, he saw the defendant reach through the space between the driver and passenger seat and go through Poindexter's pockets. The defendant then exited the car and ran off in the same direction as Williams.

¶ 15 Blake testified that he went into Fleming's apartment and told Fox to call the police. He then ran down to Rausheeta Gates's apartment and told her to call the police because "[the defendant] just shot Marlon."

¶ 16 Blake stated that he returned to Poindexter's car, took his foot off the gas, and turned the car off. He then waited for the ambulance with Gates. Blake stayed at the scene until Poindexter left in the ambulance.

¶ 17 Blake testified that he saw Williams at Williams's grandmother's apartment and asked him if he had anything to do with the shooting, to which Williams replied, "hell, no." Blake then walked to Fox's workplace and called his mother to pick him up so that she could take him to the police station. Blake eventually left Fox's work, saw Officer Pulido, and agreed to go to the police station with him. He agreed that during his interrogation, he told Pulido that he did not believe that there was "beef" between the defendant and Poindexter because the defendant "had been locked up" in juvenile detention. He clarified that he "[didn't] know what their beef was about."

¶ 18 Rausheeta Gates testified that she dated Poindexter off and on since middle school and that they had two children together. On the day of the shooting, Poindexter was at Gates's apartment; he had been there since the previous evening because he was watching the children while she was working the midnight shift. She returned home around 8 a.m.,

and Poindexter left the apartment in the afternoon. She stated that, some time later, she looked outside and saw people running past her window. Soon after, Blake ran up the stairs and banged on her door, "telling me that Marlon had been shot, [the defendant] shot him." She testified that Blake was in shock and concerned about her welfare. She noted that Blake stayed at the scene the entire time and cooperated with the police.

¶ 19 Aricka Fox testified that, at the time of the incident, she worked the 3 p.m. to 11 p.m. shift at Shamrock Services, located down the street from the murder scene. She stated that on July 11, 2011, around 3 p.m., she and Blake went to Fleming's apartment, which was within walking distance of her work. Not long after they arrived, Blake went downstairs to see what Poindexter was doing; he regularly accompanied Fox to Fleming's house and spent time with Poindexter. Blake returned a short time later and told Fox he had a ride to the store. Shortly thereafter, he "busted in the house" and told her that Poindexter had been shot by the defendant. She told him to go tell Gates what had happened. She called 9-1-1. She stated that she then walked to work because she was already late for her shift. She testified that she saw Blake again when he came to her workplace. After talking to her, he left, and the police picked him up as he was walking down the street.

¶ 20 Adam Williams testified that the day before the shooting, he saw the defendant at Terral Barnes's house. He stated that the defendant was showing off a small, silver semi-automatic pistol.

¶ 21 Williams testified that the next day, July 11, 2011, he and Sandberg picked up the defendant at his house. They went to get gas and then headed over to Williams's

grandmother's apartment. Blake was outside when they arrived and began talking to the defendant. Williams testified that he and Blake were on good terms but were not "buddy-buddy." He testified that he had never seen Blake with a gun. Williams drove the defendant and Blake in Sandberg's car to the Hit and Run gas station, where the defendant sold some marijuana.

¶ 22 When they returned from their trip to the gas station, Williams realized that he forgot to buy cigarillos, which are used to make blunts (a method to smoke marijuana). Blake suggested that Poindexter, who was sitting in his car, probably had cigarillos. The defendant went to say hello to Poindexter, and Blake went to change his shoes. Williams then went over to say hello and to ask Poindexter if he had cigarillos and wanted to smoke marijuana. Poindexter agreed, and Williams, Blake, and the defendant got into Poindexter's car. Everyone but the defendant was talking "guy stuff" and smoking. He testified that the defendant, however, was "just to hisself." When they finished smoking marijuana, Williams lit a cigarette. As he turned to offer the cigarette to Poindexter, he saw the defendant make a "swift movement" and heard a deafening gunshot. He agreed that he did not actually see the defendant shoot the gun. Williams got out of the car and ran, stopping in the grassy area of a nearby church. He saw the defendant there, holding the same silver semi-automatic gun that he had seen him with the night before. Williams was "freaking out" and believed that the defendant was going to shoot him, so he ran back towards his grandmother's apartment building while the defendant ran in a different direction.

¶ 23 After returning to the scene, Williams saw how badly Poindexter had been injured. He told Poindexter that he loved him and that he was going to make it through this; he then searched Poindexter's car for Sandberg's car keys, which, in the interim, he had realized were missing. He then went into his grandmother's apartment. Blake came into the apartment and asked Williams if he knew that the shooting was going to happen, to which he replied that he did not. Blake told Williams that they needed to call the police, but Williams "wasn't trying to hear none of that." He testified that he was crying and praying, and wished only to see his one-year-old daughter. He testified that he "got out of there" and paid someone to drive him to St. Louis to his daughter's mother's house. He stated that he left before the police and ambulance arrived. Later, Sandberg told him that the police were "trying to hit [him] with conspiracy to murder," so he called the Alton police department.

¶ 24 The police picked Williams up in St. Louis and drove him to the police station, where he was interviewed. He agreed that he "started to" but did not tell the police that he had seen the defendant at the church with a gun.

¶ 25 Jackie Sandberg testified that she first met the defendant at Terral Barnes's house the night before the murder. That night, the defendant showed a small gun to Barnes. The next day, Williams and Sandberg picked up the defendant in her car, and they ended up at Williams's grandmother's apartment. She stayed at the apartment watching television while Williams and the defendant went to the store. The next time she saw Williams, he ran into the apartment, crying and praying, thanking God that "it wasn't him" and stating that "it could have been him." Over defense counsel's objection,

Sandberg testified that Williams told her that the defendant shot "him," though he did not clarify who he meant at first. She stated that Williams was still in the apartment when the police started to arrive.

¶ 26 Sandberg testified that she drove her car, a white Grand Am, to the apartment that day. Williams had the keys to her car at the time of the shooting because he had driven her car to the Hit and Run; she was never able to find the keys, and her friend had to pick her up from the apartment. At the time, she did not tell the police that her keys were possibly in Poindexter's car.

¶ 27 Terral Barnes testified that, at the time of the trial, he was in custody for driving under the influence. He stated the defendant was like "family" to him and that, the night before the murder, the defendant was at his house. He testified that the defendant had "a little .22 pistol" on him that evening. He agreed that he told the police about this approximately one year later, while he was being questioned regarding a different matter. He also agreed that, at first, he denied seeing the defendant with a gun that night.

¶ 28 Delores Wheeler testified that she is the defendant's grandmother. On July 11, 2011, at approximately 4 p.m., the defendant showed up at Wheeler's home. The defendant was sweating and told his grandparents that he had been playing basketball. After about 15 minutes, his grandfather drove him home.

¶ 29 Next, the State read an exhibit into evidence. It stated that on July 11, 2011, the defendant was wearing a home ankle monitoring system. The monitor showed that he was out of range from his residence at 2:21 p.m. and was not back in range until 4:34

p.m. Approximately two minutes after the monitor came into range, the transmitter showed an open strap, which occurs when someone has tampered with the strap.

¶ 30 Detective Michael O'Neill testified that he executed a search warrant at the defendant's home, where he lived with his mother. The police seized an electronic home monitoring unit that was hooked into the wall in the front room with a phone cord. The home base unit communicated directly with a bracelet that detects the proximity of the bracelet to the home base unit. An ankle bracelet with its strap cut was found in a drawer in the kitchen; the defendant was supposed to be wearing that ankle bracelet at that time.

¶ 31 In an upstairs bedroom, O'Neill found a live round of .22-caliber Super X ammunition on the floor in front of a dresser. He testified that the shell casing found in Poindexter's car was also identified as a .22-caliber Super X ammunition round.

¶ 32 Detective Michael Metzler was the crime scene investigator in this case. Metzler recovered a spent shell casing on the front passenger seat on the outside edge of Poindexter's car. He also observed blood on the driver's seat.

¶ 33 Illinois State Police Officer James Hall is a firearms and tool mark examiner. For this case, Hall received a .22 long rifle caliber unfired cartridge with the stamping "Super X" and a spent-cartridge portion of a fired bullet. Hall tested and examined the exhibits and determined that both exhibits shared class characteristics of being copper-washed Super X .22-caliber long or long rifle bullets. He also determined that a large fragment of a bullet recovered from the scene was a .22-caliber copper-washed bullet. However, he acknowledged that a .22-caliber Super X bullet is a "very common" bullet.

¶ 34 Aloysia Elliott testified that she dated the defendant from August 2008 to December 2008 and dated Poindexter from February 2009 to March 2011. She stated that the defendant called her a couple of times around April 2011. He left voicemails telling her that he loved her, and "he was sorry for me seeing him in the car with my cousin Gretchen."

¶ 35 Dr. Gershom Norfleet testified that he performed Poindexter's autopsy. He retrieved bullet fragments from a gunshot wound on Poindexter's head. There was no exit wound. Poindexter's cause of death was a gunshot to the right side of his head.

¶ 36 Officer Ben Lacy testified that on August 8, 2011, he stopped a vehicle in St. Louis for a traffic violation. The car sped away at a high rate of speed when he approached the car. A chase ensued, and the car came to a stop when it blew out a tire. All of the car's occupants were taken into custody. The car's passengers were the defendant and the defendant's brother, John Riddlespriger (John). The defendant gave Lacy a false name, but John eventually told Lacy the defendant's real name.

¶ 37 John Riddlespriger is the defendant's older brother. He testified that, when the police pulled them over on August 8, 2011, the defendant told him that he was on the run for murder. Regarding Poindexter's murder, the defendant told him that "stuff just got out of hand," and "he was trying to get some and [Poindexter] got up on some bull." The defendant admitted to John that he shot Poindexter in the head because "[he] acted like he was pulling a gun." The defendant also told him that Blake and Williams were in the car when the shooting occurred.

¶ 38 John agreed that he told the police that the defendant told him that Blake had set up a drug deal; the defendant also told him that Blake and Poindexter got into a confrontation in the vehicle. He also testified that the defendant and Poindexter were "having a beef" over a girl.

¶ 39 Dixie Tillman testified that he was in prison for home invasion and had prior convictions for delivery of cocaine within 1000 feet of a school and possession of a controlled substance. In exchange for providing information in this case, he received a reduction in sentence. He testified that, after the defendant was arrested, he spoke with the defendant on the phone. The defendant told him that "he messed up."

¶ 40 The defendant's video-recorded interrogation conducted on August 8, 2011, was played for the jury. During the interrogation, the defendant denied that he knew Poindexter.

¶ 41 The defense recalled Detective Pulido. He testified that Blake told him that he did not believe that there was "a beef" between the defendant and Poindexter. He asked Blake whether the two had a disagreement over a girl, to which Blake responded, "hell no, [the defendant] been locked up." He agreed that, during the interview, Blake was "very excited" and "talking very fast"; he stated that he had never seen Blake act like that before.

¶ 42 Pulido stated that, a few months after the murder, he searched the home where Blake's brother lived for an unrelated case. This residence "was later determined to be a house that [Blake] was at on Salu Street." Police searched the house and found a loaded .22-caliber revolver in the basement; they also found a .22-caliber revolver and .22-

caliber ammunition in a shoebox in Aricka Fox's bedroom. He agreed that the revolvers discovered in this home took .22-caliber short ammunition.

¶ 43 Sergeant Peter Vambaketes testified that he spoke to Rausheeta Gates within 45 minutes of the shooting. He stated that she was dazed and, in his opinion, in shock. She implied to him that he needed to talk to Blake. He testified that Gates did not tell him that Blake told her that the defendant shot Poindexter.

¶ 44 Detective Jarrett Ford testified that he interviewed Williams during the course of the investigation. Williams told him that he was still at his grandparents' apartment when the police arrived on the scene. He stated that Williams said that he had a conversation with Blake wherein Blake told him, "you know what we need to do." Williams told him that he did not want to talk to the police because he had a warrant out for his arrest. Williams also told him that Poindexter had a small amount of marijuana on his lap, and the defendant had approximately an ounce of marijuana and $500 on him.

¶ 45 The defendant testified that, the day before the murder, he saw Williams at Barnes's house, and they made plans to meet up; the defendant had been in a juvenile detention facility for the last three to four months so he had not seen Williams since before that time. He stated that he did not have a gun with him at Barnes's house.

¶ 46 On the morning of July 11, 2011, he "weighed up some weed on the scale" at home to "make some drug runs." He stated that he had "parole movement" that day, which allowed him to leave the house. He had four ounces of marijuana on him, which was worth approximately $600. Williams and Sandberg picked up the defendant from his house, and they drove to St. Louis to buy gas; they then went to Williams's grandmother's

apartment. The defendant saw Blake and asked if he wanted to come along to the gas station so that the defendant could sell his friend some marijuana. Blake agreed. After the defendant made the sale at the gas station, they returned to the apartments.

¶ 47 When they arrived, the defendant saw a red car pull in and park. He recognized Poindexter, the driver. Poindexter recognized him and gestured to say hello. The defendant and Williams walked over to talk to Poindexter, while Blake went upstairs to put on tennis shoes. The defendant and Poindexter chatted without confrontation. Williams then asked the defendant to ask Poindexter if he wanted to smoke marijuana. Poindexter agreed, and Williams got in the front passenger seat, and the defendant got in the seat behind Poindexter. Not long after that, Blake joined them and sat in the seat behind Williams. The defendant was not smoking because he was on parole.

¶ 48 The defendant testified that he saw Blake rummaging in his pocket, and, as he did so, a "little gun" fell out. The defendant stated that he "[paid] no mind to it" and looked out the window. Suddenly, he saw the gun and heard a "pop." He and Williams got out of the car and ran; the defendant ran to his grandparents' house. He lied to his grandmother and told her that he had been playing basketball. He stated that he was scared to tell on Blake because he was afraid of retaliation from Blake's brother. After a few minutes, his grandfather drove him home.

¶ 49 At home, he told his mother that Blake had shot Poindexter. He ignored his mother's advice to go to the police and instead cut off his ankle monitor and "took off running." He went to a friend's house, where he called another friend who picked him up and took him to St. Louis. He stated that he sold marijuana in St. Louis to raise money to

hire a lawyer. He was on the run for almost a month. When he was stopped by the St. Louis police, he lied about his name and claimed he did not know Poindexter. He said that he did this because he was scared of telling on Blake.

¶ 50 The defendant testified that he never had any kind of confrontation or "beef" with Poindexter over Elliott; he and Elliott had only ever been "friends with benefits" and were never in a relationship. He stated that, since the murder, he had not talked to Dixie Tillman. He denied shooting Poindexter and stated that Blake shot him. On cross-examination, he agreed that Blake, Williams, and Tillman were lying, and that he lied to Detective O'Neill about knowing Poindexter, but he was telling the truth now.

¶ 51 The following exchange occurred during the State's closing argument:

> "MS. VUCICH [(ASSISTANT STATE'S ATTORNEY)]: A girl, a grudge, dope, weed, money, we don't know why. There's one person in the room that knows why, and he is not telling it. But we know how it ends. It ends with a gunshot. The presumption of innocence that he walked into this courtroom with is gone because he's been proven guilty. He's been proven guilty of shooting Marlon Poindexter. Until two hours ago today, you didn't hear one iota or shred of evidence that [Blake] did this.
>
> MR. ANDERSON [(DEFENSE COUNSEL)]: Your Honor, I'm going to object. The defendant has no obligation to present anything.
>
> MS. VUCICH: This is closing argument. He testified that [Blake] did it. I think I can argue that [Blake] did not do it.
>
> THE COURT: Counsel may proceed.
>
> MS. VUCICH: Until two hours ago today you didn't hear one shred of evidence that Blake did this.
>
> * * *
>
> [Adam Williams] tells you exactly what [Blake] tells you. Adam Williams tells you they're in the car. He's in the front seat. [The defendant] is behind [Poindexter]. Adam Williams isn't lying. Adam Williams has no reason to lie.
>
> * * *
>
> Motive. What about the motive in this case? Who has motive here? I still submit to you that we don't know why this happened and that there is one person in the courtroom who knows why it happened. But we know they both dated the same girl. We know that people that testified in front of you said that they saw

[Blake] and [Poindexter] riding around shortly before [Poindexter's] murder. [Blake] and [Poindexter] were cool. [The defendant] and [Poindexter] were not cool. They weren't cool. They dated the same girl. [The defendant] knew that [Poindexter] didn't treat her right. He called her and said I still love you.

MR. ANDERSON: Your Honor, there was no evidence about how [Poindexter] treated her.

THE COURT: Sustained.

MS. VUCICH: He called her and said I love you after they had broken up. *** We don't have to know why [the defendant murdered Poindexter]. But we know he did it.

All of this stuff, all of the stuff that he has brought out, is brought out to distract you from the fact that he did it.

* * *

His actions and mannerisms while testifying, you may take into consideration in your deliberations. And he got up here and he lied and you know it. ***

You know that he did it. He's been proven guilty beyond a reasonable doubt. His presumption of innocence is gone."

¶ 52 Defense counsel then gave his closing argument. He reviewed every witness's testimony and reiterated the defendant's version of the events. He agreed with the prosecutor that this was not a case about why a man was killed, but rather, who killed him. He submitted that Blake accidentally shot Poindexter while trying to rob the defendant and that Williams, Blake, and John Riddlespriger were lying. He noted that the jury heard from the defendant even though he did not have to testify. He stated that "you all promised you wouldn't hold it against him if he didn't [testify]. He chose to." After defense counsel concluded, the State gave its rebuttal argument. It stated:

"MS. VUCICH: [Defense counsel] is *** trying to distract you from the truth of this case.

* * *

This is not a difficult decision for you at all. That is something that criminal defense attorneys say to juries to try to make them feel guilty for finding murders [*sic*] guilty. And that's what he's doing when he tells you that this is difficult, and thank you for your time, and this is a hard thing to do. No, it isn't. It

isn't difficult. Because twenty people took that witness stand and proved him guilty beyond a reasonable doubt. This is simple. It is simple.

Beyond a reasonable doubt. There is nothing that says we have to prove him guilty beyond all shadow of a doubt. This is beyond a reasonable doubt. He's been proven guilty beyond a reasonable doubt.

* * *

[Blake] was not charged with first degree murder because when [the police] spoke to him, they believed what he was saying. They followed up on it. Everyone, if you believe what Mr. Anderson just got up here and told, you all [*sic*] twenty witnesses lied; every one of them. Every one of them. From [Blake] to [Williams] to [Gates].

* * *

You have to believe that all twenty of these people are liars. And they aren't. Because everything they told you matches up.

* * *

You can't have it both ways and say [Blake] set up a robbery or maybe [Williams] set up a robbery, but definitely [the defendant] didn't do anything wrong. *** Distracting you, distracting you from the truth in this case by throwing everything at you, by throwing all these things at you to try to get you to not focus on the fact that [the defendant] committed this murder.

* * *

He didn't have to testify. He did not have to present an ounce of evidence. He did. He did because he was backed into a corner. Because for the last three days you've heard everyone come in here and say he did it. Everyone. Everyone said he did it.

MR. ANDERSON: I'm going to object on his choice to testify or not to testify.

MS. VUCICH: He opened the door. He said—

THE COURT: Overruled, argument.

MS. VUCICH: He testified because he heard everyone come in here and say that he did it. And you know it. You know that he's guilty of first degree murder. His presumption is done. It's gone. He's guilty of first degree murder. He's guilty of armed robbery. I ask that you find him guilty of both because the law that you will be instructed on requires it. And justice demands it. And Marlon Poindexter and his family and his children deserve it."

¶ 53 The jury found the defendant guilty of first-degree murder.

¶ 54 A sentencing hearing was held on March 17, 2015. The presentence investigation report (PSI) indicated that the defendant was 20 years old at the time of the offense and that he received a high school diploma in 2010 from the Department of Juvenile Justice.

No evidence in mitigation or aggravation was presented, but the State presented its argument regarding the factors in aggravation. The defendant faced a minimum sentence of 45 years' imprisonment: 20 years for first-degree murder and a mandatory 25-year firearm enhancement. The court sentenced the defendant to 50 years' imprisonment.

¶ 55 The defendant appeals and presents this court with multiple arguments. He makes the following assertions: (A) he is entitled to a new trial because the prosecutor's improper closing argument had the cumulative effect of denying him a fair trial and constituted plain error; (B) evidence that Aloysia Elliott had dated Poindexter after she broke up with the defendant was inadmissible because it was irrelevant to prove that he committed the charged offenses and was highly prejudicial; (C) he is entitled to a new trial because the trial court violated Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) by failing to ask the prospective jurors whether they understood and accepted the principles enumerated in the rule; and (D) his 50-year life sentence, imposed for a crime committed at age 20, was a *de facto* life sentence, and violates the Illinois Constitution's proportionate penalties clause. We address these arguments in turn.

¶ 56 II. ANALYSIS

¶ 57 A. Closing Arguments

¶ 58 The defendant first asserts that he is entitled to a new trial where the State's closing argument (1) misstated the law by arguing that he was no longer entitled to the presumption of innocence, and that, to believe him, the jury must find that each of the State's witnesses was lying; (2) disparaged the integrity of defense counsel by accusing him of attempting to win an acquittal by distraction and deception; (3) vouched for the

credibility of its witnesses and called him a liar; and (4) appealed to the emotions of the jury by arguing that justice demands a guilty verdict because the victim's family deserves it. He argues that "considering the extreme prejudice resulting from the cumulative effect of the prosecutorial misconduct, [he] was denied a fair trial."

¶ 59 We begin by noting that the defendant failed to object on any of these grounds during the State's closing argument and did not raise these contentions of error in a posttrial motion; therefore, he has forfeited this argument. However, the defendant requests that we review his contention under the plain-error doctrine. See Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967).

¶ 60 The plain-error doctrine permits a reviewing court to consider unpreserved error when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence. *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). In the first instance, defendant must first prove "prejudicial error." *Id*. at 187. That is, he must show both that there was plain error and that the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against him. *Id*. In the second instance, he must prove that there was plain error and that the error was so serious that it affected the fairness of his trial and challenged the integrity of the judicial process. *Id*. If he is able to carry this burden, then prejudice to him is presumed because of the importance of the right involved, regardless of the strength of the evidence. *Id*. In both instances, the burden of persuasion remains with defendant. *Id*.

¶ 61 The first step of plain-error review is determining whether any error occurred. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). As we explain below, we find no error in the prosecutor's statements during her closing argument; therefore, the defendant's assertions fail.

¶ 62 Every defendant is entitled to a fair trial free of prejudicial comments by the prosecution. *People v. Young*, 347 Ill. App. 3d 909, 924 (2004). However, a prosecutor is allowed a great deal of latitude in making the closing argument. *People v. Cisewski*, 118 Ill. 2d 163, 175 (1987). She may comment on the evidence and on any fair and reasonable inference the evidence may yield. *People v. Runge*, 234 Ill. 2d 68, 142 (2009). Reviewing courts will consider the closing argument as a whole, rather than focusing on selected phrases or remarks, and will find reversible error only if the defendant demonstrates that the improper remarks were so prejudicial that real justice was denied or that the verdict resulted from the error. *Id*.

¶ 63 There is an apparent conflict in our supreme court's determination regarding the proper standard of review for claims based on allegedly improper closing arguments. In *Wheeler*, our supreme court applied a *de novo* standard of review. *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007). However, in *Blue*, which the *Wheeler* court cited with approval, the court applied an abuse of discretion standard. *People v. Blue*, 189 Ill. 2d 99, 128 (2000). However, we need not resolve this issue here, as our conclusion is the same under either standard.

¶ 64 1. *The Defendant's Presumption of Innocence*

¶ 65 The defendant first asserts that the prosecutor misstated the law by arguing that he was no longer entitled to the presumption of innocence. He argues that the law presumes the innocence of the accused until the point during deliberation when the jury concludes that there existed proof beyond a reasonable doubt. *People v. Weinstein*, 35 Ill. 2d 467, 470 (1966).

¶ 66 However, it is fundamental that a prosecutor may argue that the defendant is guilty when she states, or it is apparent, that such argument is based solely on the evidence. *Cisewski*, 118 Ill. 2d at 178. When the prosecutor's comments are viewed in the context of the entire closing argument, it is clear that she was saying that the defendant was guilty based upon the evidence. During her argument, she stated that "[t]he presumption of innocence that [the defendant] walked into this courtroom with is gone because he's been proven guilty." She then went on to review the evidence demonstrating his guilt. In the defendant's closing, his counsel reviewed the testimony of every witness and gave the defendant's version of the events. The prosecutor's rebuttal disputed defense counsel's version and concluded that "[the defendant's] presumption is done" because the evidence had proven him guilty of first-degree murder. Arguing that the evidence demonstrates that the defendant is guilty is not the equivalent of misstating the law regarding his presumption of innocence. See *People v. Tomes*, 284 Ill. App. 3d 514, 523 (1996) (the appellate court found no impropriety in the prosecutor's comment that " '[defendant] was cloaked in innocence' " before the jury heard the evidence at trial, but not after " '[t]he evidence [was] in,' " because the prosecutor was essentially saying that defendant was

guilty, not misstating the law on the presumption of innocence). We conclude that the prosecutor did not misstate the law regarding the defendant's presumption of innocence.

¶ 67 The defendant next asserts that the prosecutor improperly argued that a jury would have to believe the State's witnesses were lying in order to believe his version of the events. However, our supreme court has drawn a distinction between situations "where a prosecutor permissibly argues that a jury would have to believe the State's witnesses were lying in order *to believe* the defendant's version of events and where a prosecutor improperly argues that a jury would have to believe the State's witnesses were lying in order *to acquit* [the] defendant." (Emphases in original.) *People v. Banks*, 237 Ill. 2d 154, 184-85 (2010) (citing *People v. Coleman*, 158 Ill. 2d 319, 346 (1994)). The situation here, like in *Banks* and *Coleman*, is the former, and was a direct response to the defense's attack on the credibility of the State's witnesses. See *id.* at 185. Thus, the argument was not a misstatement of the law or an attempt to distort the burden of proof.

¶ 68 2. *The Prosecutor's Alleged Disparagement of Defense Counsel's Integrity*

¶ 69 The defendant next argues that the prosecutor disparaged the integrity of defense counsel by accusing him of attempting to win an acquittal by distraction and deception. He points to the prosecutor's comments that defense counsel was trying to distract the jury from the truth in this case.

¶ 70 We reiterate that prosecutors are afforded wide latitude in closing argument. *Cisewski*, 118 Ill. 2d at 175. The comments are considered in context, rather than focusing on selected phrases or remarks. *Runge*, 234 Ill. 2d at 142. Comments by the prosecutor that are brief and properly directed against the credibility of defendant and his

theory of defense are not improper. See *People v. Kirchner*, 194 Ill. 2d 502, 548 (2000) (no reversible error found where comments by the prosecutor that defense counsel was attempting to "dupe" the jury were brief and properly directed against the defendant's credibility and his theory of the defense).

¶ 71 The comments that the defendant complains of here did not exceed the bounds of permissible argument. The prosecutor made a comment about "distraction" in response to the defendant's theory of the case and the evidence he brought in to support it, and later, mentioned it again in response to defense counsel's closing argument. The cases that the defendant cites in support of his argument contain comments by the prosecution that are far more egregious, and therefore, are distinguishable. See, *e.g.*, *People v. Monroe*, 66 Ill. 2d 317, 323-24 (1977) (prosecutor referred to defense counsel's argument as "fraudulent" and that defense counsel did not believe his own argument); *People v. Kidd*, 147 Ill. 2d 510, 544 (1992) (prosecutor's repeated reference to defense counsel's "smokescreen" was particularly prejudicial because the defendant was accused of arson resulting in the deaths of 10 children); *People v. Emerson*, 97 Ill. 2d 487, 497 (1983) (prosecutor argued that defense counsel had laid down a smokescreen " 'composed of lies and misrepresentations and innuendos' " and that "all defense attorneys try to 'dirty up the victim' to distract the attention of the jury from the defendant's crime").

¶ 72 3. *The Prosecutor's Alleged Statements of Credibility*

¶ 73 Prosecutors are not permitted to vouch for the credibility of a government's witness nor are they permitted to use the credibility of the state's attorney's office to bolster a witness's testimony. *People v. Williams*, 2015 IL App (1st) 122745, ¶ 12. The

defendant asserts that the prosecutor vouched for the credibility of a key witness by stating that, "Adam Williams isn't lying. Adam Williams has no reason to lie." He also asserts that the prosecutor "placed the authority of her office behind the assessment of [the defendant's] testimony" by stating that "he got up here and lied and you know it."

¶ 74 The defendant cannot claim error if he induces certain comments which would otherwise be improper. *People v. Branch*, 158 Ill. App. 3d 338, 342 (1987). Additionally, a prosecutor may state her opinion that the defendant is lying if that statement is based on the evidence. *People v. Caballero*, 126 Ill. 2d 248, 272 (1989).

¶ 75 In *Branch*, defendant argued that the prosecutor committed reversible error during closing argument by vouching for the credibility of the victim and by calling the defendant a liar. *Branch*, 158 Ill. App. 3d at 342. This appellate court found that the prosecutor's comments were clearly invited by defense counsel's closing argument, which had not only suggested that the victim had been manipulated by her mother but also that the mother had a reason to lie. *Id*. We determined that defendant cannot claim error if he induced the comments and found that the prosecutor's comments, viewed as a whole, were not so highly inflammatory that they substantially prejudiced defendant or impaired his right to a fair trial. *Id*. at 342-43.

¶ 76 Similarly, here, the defendant testified that Blake and Williams were lying, but he was not. In closing, defense counsel argued that Williams was lying to the jury and had, in fact, set up a robbery that had gone bad. Thus, the defense's theory of the case relied on convincing the jury that Williams was lying, and the defendant was not. Therefore, defense counsel invited the State's argument that its witnesses were credible and that the

defendant was lying, which was a rebuttal to the defense's argument. The prosecutor's statements did not prejudice the defendant or impair his right to a fair trial.

¶ 77 4. *The Prosecutor's Allegedly Improper Appeal to the Emotions of the Jury*

¶ 78 The defendant argues that it was reversible error for the prosecutor to ask the jury to convict because the law required it, justice demanded it, "and because Marlon Poindexter and his family and his children deserve it." He notes that it is improper to say anything which has the sole effect of inflaming jurors' passions or arousing prejudice (*Blue*, 189 Ill. 2d at 128), and that the Illinois Supreme Court has condemned argument that refers to the fact that the victim left a family. See *People v. Ramirez*, 98 Ill. 2d 439, 453 (1983).

¶ 79 While the prosecutor mentioned the family in her rebuttal argument, it was a brief and singular reference. As we have discussed at length above, the bulk of the prosecutor's closing argument and rebuttal was focused on reiterating the favorable evidence that the State presented to the jury and refuting the defendant's evidence. We do not believe that the comments improperly shifted the focus of attention away from the actual evidence in the case.

¶ 80 However, even assuming *arguendo* that this comment was improper, it did not rise to the level of plain error. Not every reference to a victim's rights entitles a defendant to a new trial; reversal of a conviction is appropriate only when the overall fairness of the trial has been compromised by the prosecutor's argument. *People v. Smith*, 152 Ill. 2d 229, 268 (1992). Our supreme court has specifically ruled that a prosecutor's remarks do

not require reversal if the State's evidence of guilt was substantial rather than closely balanced. *Id*.

¶ 81 The State presented strong evidence of the defendant's guilt. Multiple people saw the defendant with a small, .22-caliber semi-automatic gun the day before the murder. Blake saw the defendant put a small, .22-caliber semi-automatic gun to Poindexter's head and heard a gunshot. Blake, who was "freaking out," then ran and told both Gates and Fox that the defendant shot Poindexter. Williams also heard the gunshot and saw the defendant moments later holding a small, .22-caliber semi-automatic gun. Fragments of .22-caliber ammunition were retrieved from Poindexter's head during his autopsy. Ammunition like that used in a .22-caliber semi-automatic gun was found in the defendant's home. The defendant's brother, John, testified that the defendant told him that he shot Poindexter in the head. Finally, the defendant fled the scene, cut off his ankle monitor, and was on the run for more than a month. Once detained by the police, he lied about his identity and then lied about knowing Poindexter.

¶ 82 In contrast, the evidence presented in the defendant's defense was slim and relied heavily on his credibility. He presented evidence that a police search of a house that Blake spent time at turned up a .22-caliber revolver; that Blake did not believe that, at the time of his police interview, Poindexter and the defendant had "beef" over a girl; and that Gates did not tell police that Blake told her that the defendant shot Poindexter. The remaining evidence presented was the defendant's testimony in which he claimed that he saw Blake shoot Poindexter and that he ran because he was afraid of Blake's family. Based on the strength of the State's case, we do not believe that the jury's verdict was

"prompted by an isolated remark which referred to the victim's rights in a vague and general manner." *Smith*, 152 Ill. 2d at 269. The prosecutor's comment did not deny the defendant a fair trial.

¶ 83 5. *The Cumulative Effect of the Prosecutor's Alleged Misconduct Denied the Defendant a Fair Trial and Constituted Plain Error*

¶ 84 Finally, the defendant asserts that, even if this court concludes that each instance of improper conduct does not itself require reversal, the cumulative effect of the misconduct requires reversal. See *People v. Abadia*, 328 Ill. App. 3d 669, 684 (2001).

¶ 85 However, as we have discussed, we readily found that no error occurred, and, even if it did, those errors were not prejudicial because the evidence in this case was not closely balanced. Thus, the defendant fails to establish the first prong of the plain-error rule. The defendant also fails to establish the second prong of the plain-error rule because the cumulative error was, at best, minor, and therefore was not so serious that it affected the fairness of his trial. *Herron*, 215 Ill. 2d at 187.

¶ 86 In a case dealing with prosecutorial misconduct during closing argument, plain error occurs only when the comments were so inflammatory as to deny the defendant a fair trial or so flagrant as to threaten deterioration of the judicial process. *People v. Boling*, 2014 IL App (4th) 120634, ¶ 126. We conclude that the defendant has failed to establish plain error in this instance.

¶ 87 B. Elliott's Testimony

¶ 88 Next, the defendant asserts that the trial court erred in allowing the State to present evidence that Elliott had dated Poindexter after she and the defendant broke up, claiming

that the evidence was irrelevant to the charged offenses and was highly prejudicial because it allowed the State to argue that the defendant had a motive to murder Poindexter.

¶ 89 It is within the trial court's discretion to decide whether evidence is relevant and admissible. *People v. Morgan*, 197 Ill. 2d 404, 455 (2001). Its decision concerning whether evidence is relevant and admissible will not be reversed absent an abuse of discretion. *Id*. An abuse of discretion will be found only where the trial court's decision is arbitrary, fanciful, or unreasonable, or where no reasonable man would take the trial court's view. *Id*. Evidence is considered relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of an action either more or less probable than it would be without the evidence. *Id*. at 455-56. However, a trial court may reject evidence on the grounds of relevancy if the evidence is remote, uncertain, or speculative. *Id*. at 456.

¶ 90 Motive is not an essential element of the crime of murder, and the State has no obligation to prove motive in order to sustain a conviction of murder. *People v. Smith*, 141 Ill. 2d 40, 56 (1990). However, any evidence which tends to show that an accused had a motive for killing the deceased is relevant because it renders more probable that the accused did kill the deceased. *Id.* In order for such evidence to be competent, it must, at least to a slight degree, tend to establish the existence of the motive relied upon or alleged. *Id*.

¶ 91 Here, the trial court granted the defendant's motion *in limine* prohibiting Elliott's testimony that she had heard that the defendant and Poindexter had an ongoing

disagreement, but allowed testimony that she had dated Poindexter after breaking up with the defendant. At trial, Elliott testified that she dated the defendant from August 2008 to December 2008 and dated Poindexter from February 2009 to March 2011. She stated that the defendant called her a couple times around April 2011 and left voicemails telling her that he loved her. This testimony was presented to the jury in order to establish a possible motive for the defendant's actions.

¶ 92 Other testimony presented by the State reflecting a possible motive for the murder came from John and Blake. John testified that the defendant and Poindexter were "having a beef" over a girl. Blake testified that the defendant and Poindexter were "not cool," though he did not believe that it was over a girl because the defendant had recently been in juvenile detention. Taken together with the testimony of these men, Elliott's testimony establishes, at least to a slight degree, that the defendant's motive to kill Poindexter may have been over Elliott. We cannot say that the trial court's decision to allow Elliott's testimony was arbitrary, fanciful, or unreasonable.

¶ 93 We also do not agree that Elliott's testimony was overly prejudicial. First, we note that testimony that is erroneously admitted does not automatically warrant reversal. *People v. Easley*, 148 Ill. 2d 281, 330 (1992). Even without Elliott's testimony, the jury would have been presented with the remaining evidence against the defendant, including the physical evidence and the substantial witness testimony. See *id.* Furthermore, the State did not focus on the "beef over a girl" theory as the motive in this case, as the prosecutor stated multiple times during closing argument that she did not know why the defendant murdered Poindexter and that the jury did not need to decide why the murder

occurred. Defense counsel agreed in his closing argument that determining the motive was irrelevant. The defendant was not denied his right to a fair trial because of the introduction of this evidence.

¶ 94 C. Illinois Supreme Court Rule 431(b)

¶ 95 The defendant argues that the trial court erred when questioning the jury about the principles espoused in Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). The defendant concedes that this error was not preserved, but claims that the error can be reviewed under the first prong of plain error (*i.e.*, that there was plain error and that the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against him). *Herron*, 215 Ill. 2d at 186-87. The State concedes that the trial court erred in giving the Rule 431(b) admonishments but asserts that the defendant fails to carry his burden of establishing plain error because the evidence is not closely balanced.

¶ 96 As both parties concede that the trial court erred but the issue must be reviewed under the plain-error doctrine, we resolve this issue only by reiterating that we have already found, in section II.A.4 of this order, that the evidence was not closely balanced in this case. Thus, despite the court's erroneous Rule 431(b) admonishments, the defendant fails to establish that this error alone severely threatened to tip the scales of justice against him, and we find no plain error in this instance.

¶ 97 D. Juvenile Protections Under the Illinois Constitution

¶ 98 Finally, the defendant argues that his 50-year sentence, imposed for a crime committed at age 20, is a *de facto* life sentence that violates the Illinois Constitution's

proportionate penalties clause because the trial court did not fully consider his youth and its attenuating circumstances. The State responds that the defendant's legislatively mandated aggregate minimum sentence did not violate the Illinois Constitution because he is not a juvenile.

¶ 99 The eighth amendment's prohibition of cruel and unusual punishment guarantees individuals the right not to be subjected to excessive sanctions. *Miller v. Alabama*, 567 U.S. 460, 469 (2012). The United States Supreme Court held that mandatory life-without-parole sentences imposed on juveniles are unconstitutional because they prevent the trial court from considering mitigating factors, such as defendant's age and immaturity. *Id*. at 489. The line distinguishing juveniles from adults, however, has been drawn at age 18. *Roper v. Simmons*, 543 U.S. 551, 560 (2005).

¶ 100 The Illinois Supreme Court has expanded *Miller* to hold that both *de facto* life sentences and discretionary life sentences are unconstitutional for juveniles where the trial court did not consider the mitigating factors in *Miller*. See *People v. Reyes*, 2016 IL 119271, ¶ 10; *People v. Holman*, 2017 IL 120655, ¶ 40. It also agrees with the United States Supreme Court that, for sentencing purposes, the age of 18 marks the line between juveniles and adults. *People v. Harris*, 2018 IL 121932, ¶ 61.

¶ 101 Similar to the eighth amendment, a challenge under the proportionate penalties clause of the Illinois Constitution contends that the penalty in question was not determined according to the seriousness of the offense. *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005). The proportionate penalties clause of the Illinois Constitution states: "All 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. To succeed on a proportionate penalties claim, a defendant must show either (1) that the punishment for the offense is cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community or (2) that similar offenses are compared and the conduct that creates a less serious threat to the public health and safety is punished more harshly. *People v. Klepper*, 234 Ill. 2d 337, 348 (2009).

¶ 102 On this issue, the defendant raises an "as-applied," rather than a "facial," constitutional challenge. A party raising a facial challenge must establish that the statute is unconstitutional under any possible set of facts; an as-applied challenge requires a showing that the statute is unconstitutional as it applies to the specific facts and circumstances of the challenging party. *Harris*, 2018 IL 121932, ¶ 38. An as-applied constitutional challenge is a legal question that we review *de novo*. *People v. Johnson*, 2018 IL App (1st) 140725, ¶ 97.

¶ 103 We conclude, based on the Illinois Supreme Court's analysis in *Harris*, that we are unable to consider the defendant's as-applied challenge because it is premature. See *Harris*, 2018 IL 121932, ¶ 46.

¶ 104 In *Harris*, the 18-year-old defendant was convicted of first-degree murder, attempted first-degree murder, and aggravated battery with a firearm and sentenced to a mandatory minimum aggregate term of 76 years' imprisonment. *Id.* ¶ 1. The appellate court vacated defendant's sentences and remanded for resentencing, holding that his sentence violated the proportionate penalties clause because the trial court had not considered his youth and its attendant characteristics, even though he was not legally a

juvenile. *Id*. ¶¶ 1, 18. The Illinois Supreme Court reversed that holding. *Id*. ¶ 63. The court reasoned that as-applied constitutional challenges are, by definition, dependent on the specific facts and circumstances of the person raising the challenge, and that defendant did not raise his as-applied constitutional challenge in the trial court; therefore, it did not hold an evidentiary hearing on the claim and did not make findings of fact on defendant's specific circumstances. *Id*. ¶¶ 37, 39-40. The court emphasized the importance of a sufficiently-developed record, which is created by an evidentiary hearing and findings of fact by the trial court. *Id*. ¶ 41. The court concluded that the record contained "only basic information about defendant, primarily from the presentence investigation report" and that, because an evidentiary hearing was not held, "the trial court did not make any findings on the critical facts needed to determine whether *Miller* applies to defendant as an adult." *Id*. ¶ 46. Accordingly, defendant's as-applied challenge was premature. *Id*.

¶ 105 Like in *Harris*, the defendant in this case did not raise his constitutional claims in the trial court. Therefore, there was never an evidentiary hearing on the matter, and the trial court did not make findings of fact necessary to determine whether *Miller* applies to the defendant's circumstances. The record contains "only basic information" about the defendant garnered from the PSI and the sentencing hearing. Therefore, the record in this case is insufficient to consider the defendant's constitutional challenges, and, pursuant to *Harris*, his claims are premature.

¶ 106 Also following *Harris*, we decline to remand the matter for an evidentiary hearing, but note that the defendant is not foreclosed from raising his as-applied constitutional

claims in a postconviction petition pursuant to the Post-Conviction Hearing Act (725 ILCS 5/122-1 *et seq*. (West 2010)). See *id*. ¶ 48.

¶ 107 III. CONCLUSION

¶ 108 For the foregoing reasons, the defendant's conviction and sentence are affirmed.

¶ 109 Affirmed.