

FOURTH DIVISION
SEPTEMBER 6, 2012

No. 1-10-2851

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 08CR15903
)	
MARESA PRADO,)	Honorable
)	Rosemary Higgins-Grant,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

ORDER

¶1 *HELD:* Defendant's conviction upheld where there was sufficient evidence to establish her guilt beyond a reasonable doubt. Defendant's sentence affirmed where it did not constitute an abuse of discretion.

¶2 Following a jury trial, defendant Maresa Prado was convicted of intentional homicide of an unborn child and robbery and was sentenced to 28 years' imprisonment and 7 years' imprisonment, respectively. Defendant appeals her convictions and the sentences imposed thereon, arguing: (1) the evidence was insufficient to prove her guilty beyond a reasonable doubt;

and (2) the circuit court erred in considering improper aggravating factors in imposing her sentence. For the reasons contained herein, we affirm the judgment of the circuit court.

¶3 I. BACKGROUND

¶4 On June 7, 2008, Marilu Resendiz, who was 20 weeks pregnant with her third child, was attacked and robbed by a group of four Hispanic women. She delivered a stillborn baby two days after the attack. Defendant, along with Melissa Almendarez and Patricia Lopez, was subsequently arrested in connection with the attack on Resendiz and was charged with intentional homicide of an unborn child (720 ILCS 5/9-1.2(a)(1), (a)(2) (West 2008)) and robbery (720 ILCS 5/18-1 (West 2008)). Defendant and Almendarez were tried together by a jury before the Honorable Rosemary Higgins-Grant. Lopez elected to proceed by way of a simultaneous and severed bench trial. This appeal solely concerns defendant.¹

¶5 At trial, Chicago Police Officer Michael Alesia testified that on June 7, 2008, sometime after 5 p.m., he and his partner, Officer Jorge Santos, were dispatched to 3930 West 28th Street to investigate a robbery. When they arrived at that location, Officer Alesia observed that a Chicago Fire Department ambulance had already arrived at the scene and that paramedics were treating the victim, Marilu Resendiz. Officer Alesia approached the ambulance and spoke to Resendiz. He observed bruises and marks "all over" Resendiz's face, and although she was lying

¹ The jury was dismissed several times throughout the lower court proceedings when evidence that was relevant only to Lopez was presented to the trial court. The jury did not hear or consider such evidence. Only the evidence that was presented against defendant will be recounted in this disposition.

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on her back on the gurney, he also noted that her abdomen was "swollen" and "extended." He testified that in his opinion, the "pronounced and swollen" nature of Resendiz's abdomen was "not consistent with, anything in [his] opinion, except for a pregnancy." During Officer Alesia's initial conversation with Resendiz, she was "hysterical" and "very visibly distressed, both physically and emotionally," but she was able to provide him with an account of the attack and the persons involved. Specifically, Resendiz told Officer Alesia that four female Hispanics had attacked her, and she identified one of her assailants as Skirts, a girl that she knew who was associated with the area of 28th Street and Tripp. Resendiz kept repeating the nickname Skirts and told Officer Alesia that the four women had jumped into a blue van after they attacked her.

¶6 After the ambulance left the scene to transport Resendiz to St. Anthony Hospital, Officer Alesia and his partner "toured the area" in search of a blue van, but they were unable to find a vehicle matching the description provided by Resendiz. He and his partner then went to the hospital to speak with Resendiz and her treating physician. After completing their interviews, Officer Alesia generated an incident report and passed the information on to Detective Catherine Rolewicz.

¶7 On cross-examination, Officer Alesia acknowledged that he included a brief, general description of the suspect that Resendiz knew as Skirts in his report. In that report, Skirts was simply described as a female Hispanic in her late teens. He did not include any information pertaining to Skirts' height, weight, eye color, hair color, complexion, or distinguishing marks or features. Officer Alesia further acknowledged that he did not include physical descriptions of the other three assailants in the report, and explained that the omission was because Resendiz did not

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provide him with any physical descriptions of the other women involved in the attack.

¶8 Detective Catherine Rolewicz, an officer in the Chicago Police Department's Property Crimes Division, confirmed that she was assigned to investigate the June 7, 2008, robbery and attack of Resendiz. After receiving her assignment at approximately 7 p.m. that evening, Detective Rolewicz went to St. Anthony Hospital to start her investigation. When she arrived at the hospital, she conversed with Officers Alesia and Santos before speaking to Resendiz. At that time, Resendiz was lying in a hospital bed. Detective Rolewicz noted that she had a bump and bruises on her face as well as scratches on her arms and knees. Detective Rolewicz also observed that Resendiz's stomach area was "large" and "protruding" and that she appeared to be pregnant. Although Resendiz was upset and "visibly shaken," she was able to converse with Detective Rolewicz and recount her recent attack.

¶9 Resendiz immediately identified Skirts as one of the four offenders. She informed Detective Rolewicz that Skirts was a Hispanic female, who was approximately 18 to 22 years of age. She was approximately 5' 6" tall and weighed about 140 pounds. Resendiz was unable to name the other three offenders, but she did provide Detective Rolewicz with physical descriptions for two of the other women involved in the attack. Resendiz described the second offender as a shorter Hispanic female with long curly dark hair. She was approximately 5' 2" tall, weighed somewhere between 150 to 170 pounds, and appeared to be in the same age range as Skirts. Resendiz described the third offender as a Hispanic female with long blonde hair. She was unable to provide any physical description of the fourth female involved in the attack. Detective Rolewicz did not press her for any additional information at that time, but provided

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Resendiz with her business card and instructed Resendiz to contact her if she had any additional information. Before Detective Rolewicz left the hospital to prepare her report, she spoke to Doctor Diaz about Resendiz's injuries and pregnancy. A few days later, she learned that Resendiz had lost her baby. At that point, the case was reassigned to Detective Michael Kelly, a homicide detective.

¶10 On cross-examination, Detective Rolewicz testified that although the case was reassigned, she had occasion to view the arrest reports that were subsequently generated in the case. One of the reports indicated that defendant was arrested on June 27, 2008. The report revealed that she resided at 2840 South Tripp Avenue and was known by the nickname of Skirts. Detective Rolewicz acknowledged that the arrest report described defendant as measuring 5' 4" in height, which was different from the 5' 6" description of Skirts that was initially provided by Resendiz.

¶11 Sergeant Michael Kelly confirmed that he was assigned to investigate the attack on Resendiz in June 2008. At that time, he was a homicide detective in the Chicago Police Department. He first met with Resendiz at Stroger Hospital on June 11, 2008. At the time, she was "obviously distraught" and had bruising on her face. After speaking with her, Sergeant Kelly compiled a photo array. He showed the photos to Resendiz later that evening after she had been released from the hospital and had signed the standard line-up advisory form. After viewing the pictures, she "identified Ms. Prado as an individual she knew as Skirts, and one of the people that had punched her in the face and stomach and took her property."

¶12 After Resendiz made the identification, Sergeant Kelly continued his investigation and

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attempted to locate defendant and identify the other offenders. He and his partner, Detective Daniel Gallagher located and arrested defendant on June 27, 2008. When she was brought into custody, defendant asked to make a phone call to her boyfriend, Renee. Defendant provided Sergeant Kelly with the phone number and he dialed the phone for her and remained with her throughout the call. He heard defendant tell her boyfriend that she had been arrested "for that Marilu thing."

¶13 Sergeant Kelly continued his investigation and subsequently met with Resendiz on July 20, 2008, to show her another photo array. She signed another advisory form before viewing the second array. This time, Resendiz identified co-defendant Melissa Almendarez as another individual involved in her attack. Almendarez was brought into custody the following day and Resendiz viewed a physical line-up. She positively identified Almendarez as one of the offenders. On July 22, 2008, Sergeant Kelly had learned that an individual named "Patty" might have also been involved in the attack on Resendiz, and he went to speak with Fred Feliciano, the owner of a gas station located 28th and Pulaski. After conversing with Feliciano, Sergeant Kelly returned briefly to Area 4 before he went back to the gas station to show Feliciano a picture of co-defendant Patty Lopez. After Feliciano viewed Lopez's picture, Sergeant Kelly returned once again to Area 4, where he compiled a third photo array, which he showed to Resendiz. Resendiz identified Lopez from the array. Lopez was brought into police custody the following day. When she was processed, her height was ascertained to be 5'2 and her weight was 160 pounds.

¶14 On cross-examination, Sergeant Kelly stated that when he initially spoke to Resendiz at Stroger Hospital, she described Skirts as having black hair and being 5'6" to 5'9". When

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defendant was arrested on June 27, 2008, she had "lighter color[ed] hair blonde or light brown" and her height was recorded to be 5'4." Sergeant Kelly also acknowledged that in his preliminary report, Resendiz described one of the other offenders as a Hispanic female with long, blonde hair. She did not describe the offender as having dark brown or black hair with blonde streaks. When Sergeant Kelly compiled the photo array containing a picture of co-defendant Almendarez, her hair was not blonde; rather it was "dark."

¶15 Sergeant Daniel Gallagher testified that in the summer of 2008, he was a homicide detective in the Chicago Police Department, and confirmed that he and Detective Michael Kelly were assigned to investigate the robbery of Marilu Resendiz and the homicide of her unborn child. On June 27, 2008, at 7:50 p.m., they met with Resendiz at Area 4 headquarters and had her view a line-up. Prior to viewing the line-up, Detective Gallagher had Resendiz sign a "Line-Up/Photo Spread Advisory Form," in which she acknowledged that she understood that the perpetrator might not be included in the line-up and that she was not required to make an identification. After completing the form and viewing the line-up, Resendiz "positively identified Miss Prado as the person who beat and robbed her on the 7th of June." Sergeant Gallagher explained that defendant was one of five women included in the line-up. The other four women were also Hispanic females who were approximately the same age and body size as defendant. Resendiz did not hesitate before identifying defendant.

¶16 Sergeant Gallagher and his partner assembled another line-up for Resendiz to view on July 23, 2008. This time, co-defendant Lopez was included in the line-up in addition to four "non suspects." After signing another line-up advisory form, Resendiz viewed the line-up and

positively identified Lopez as being another one of the women who beat and robbed her on June 7th. Resendiz made the identification within "[s]econds" of viewing the line-up.

¶17 Marilu Resendiz testified that in June 2007, she had a physical altercation with defendant. At the time, she knew defendant only by her nickname, Skirts. After that incident, Resendiz saw defendant driving and walking around the neighborhood with friends but they did not have any other interaction until June 7, 2008, when Resendiz had another violent encounter with Skirts. On that date, Resendiz was 20 weeks pregnant with her third child, and was "physically showing." Until that day, Resendiz had received regular medical attention for her pregnancy and had not experienced any complications. Because it was raining, Resendiz decided to go to the library located on Pulaski and 27th Street. She walked to the library, carrying her purse and a clear backpack, which contained a laptop and an IPOD. After spending the afternoon reading and looking up baby names, Resendiz left the library sometime before 5 p.m. and decided to walk to a candy store located nearby, on 30th Street and Avers. As she was approaching the intersection, a baby blue van drove through a stop sign. Resendiz did not know who was driving the van, but swore and "flipped [her] finger" at the vehicle.

¶18 After making her purchase at the candy store, Resendiz traveled east on Avers, made a left on 28th Street and headed towards Springfield Avenue. As she was walking, Resendiz was using one headphone to listen to her IPOD. She did not hear anyone approach her, but suddenly felt her hair being pulled. She was then punched in her face. Resendiz fell to the ground and continued to be punched. She put her head down and her arms around her stomach. She heard several girls yelling at her and telling her to let go of her backpack. Resendiz started

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screaming that she was pregnant, but heard one of them respond, "You're not pregnant *** you're just a fat bitch." At that point, Resendiz remained hunched over on the ground and did not look at her assailants. Although she heard multiple voices, she did not know how many girls were attacking her. The assailants continued to strike Resendiz on her head, belly, and back and demanded that she let go of her backpack. Resendiz "gave up" and let go of her purse and backpack. She was then able to see the faces of three of her four assailants. She did not see the face of the girl who remained behind her.

¶19 Resendiz testified that the three girls were standing over her and that their faces were "a couple of inches away." She immediately realized that one of her attackers was defendant, who she knew as Skirts, from their prior altercation one year earlier. She recognized defendant's face as well as the birthmark on her neck. Resendiz had not seen the other two women prior to this date, but she had the opportunity to see their faces during the attack and made in-court identifications of both Almendarez and Lopez. Although Resendiz was hunched over during the majority of the attack and could not see which woman was striking her at any given point, Resendiz testified that when she looked up at Skirts, defendant kicked her in the stomach. The women then took Resendiz's purse, backpack and IPOD and left her lying on the ground. Resendiz indicated that she did not specifically know which woman took her property, but stated that her personal items were missing after the attack. Shortly after the women ran away, Resendiz observed a blue van drive by. It was driving the wrong way on a one-way street. Resendiz did not specifically see the women enter the blue van and did not have an opportunity to record the license plate number of the vehicle, but she believed it was the same van that she

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had encountered earlier as she was walking to the candy store.

¶20 After the attack, Resendiz noticed that she was bleeding from between her legs, and screamed for help, but no one came to her assistance. Her cell phone was damaged so she got up, walked to a nearby residence, knocked on the door and asked the resident to call 911, explaining that she was pregnant and bleeding. Resendiz was crying and in pain and sat down on a curb to wait for help. When no one came, she was able to put her cell phone back together and called 911 herself. An ambulance and police car arrived in response to her call. Before she was transported to St. Anthony Hospital, Resendiz spoke to a police officer and immediately identified one of her assailants as Skirts. She was not asked to provide additional descriptions of the other offenders at that time.

¶21 When Resendiz presented at the hospital, she had a bump and scratches on her face, bruises on her legs, and a red mark on her stomach. She received treatment, was provided with pain killers and was released from the hospital the next day. Resendiz, however, returned to the hospital later that same day because she was experiencing stomach pain, vaginal bleeding with blood clots and a frequent urge to urinate. Resendiz received some additional treatment at St. Anthony but was subsequently transported to Stroger Hospital in an ambulance. When she arrived at Stroger Hospital, she was told that her water bag had ruptured and that her baby was not going to survive. Resendiz delivered a stillborn baby girl, who she named Deliah Cabral, on June 9, 2008. While Resendiz was recuperating in the hospital, she spoke to Detectives Gallagher and Kelly and informed them about Skirts' involvement in the attack. At that point, Resendiz did not know Skirts' real name.

¶22 After Resendiz was released from the hospital, she spoke to her sister-in-law, Ysenia Mendez on the telephone. During that conversation, Resendiz learned additional information about Skirts. She immediately phoned Detective Gallagher and informed him that Skirts' real name was Maresa Prado. The detectives came to Resendiz's house on June 11, 2008, at approximately 9:30 p.m., and requested her to view a photo array. She was instructed to view the photographs and to circle the pictures of any girls who were involved in the attack. Resendiz identified defendant as one of the offenders.

¶23 Resendiz subsequently met with Detective Kelly on June 27, 2008, at the Area 4 police station. She was shown a five person line-up and again identified defendant. At that time, she did not have any information about the identities of the other offenders. Resendiz subsequently received a phone call on July 19, 2008, from a man named Daniel. After their conversation, Resendiz called her sister-in-law, Ysenia, and together they went to meet with a woman named Shaunte. Shaunte took them to a house in the neighborhood and Resendiz immediately contacted Detective Kelly. On July 20, 2008, Resendiz returned to the police station to view another photo array. After viewing the pictures, she identified Almendarez as one of her attackers. Detective Kelly showed Resendiz a third photo array on July 22, 2008, and this time, she identified Lopez as one of the women involved in her attack. While she was at the station, Resendiz was also asked to view a physical line-up, and she again identified Almendarez. She viewed another line-up the following day and positively identified Lopez once more. At trial, Resendiz testified that each of the co-defendants appeared similarly to the way that they looked on the day of the attack, although Almendarez's hair was different. Specifically, Resendiz explained that Almendarez had

"streaks of blonde hair" on June 7, 2008, whereas she no longer had blonde highlights in her hair on the date of trial.

¶24 On cross-examination, Resendiz acknowledged that she had not seen defendant driving around the neighborhood in a blue van. Moreover, before the date of the June 7, 2008, attack, Resendiz had not seen defendant in the company of Almendarez or Lopez. During the attack, Resendiz was huddled on the ground and acknowledged that she only had a few seconds to view the faces of her attackers. She was also distressed and crying.

¶25 Shaunte Ramirez testified that she knew each of the three co-defendants prior to the attack on Resendiz. She indicated that Almendarez was her third cousin and that she had known defendant and Lopez for years. Ramirez testified that Almendarez was friendly with defendant and Lopez and that she had seen the three girls together on several occasions. Ramirez was also friendly with Resendiz because their children were similar in age and would play together at the local park. In addition, Ramirez was "best friend[s]" with Resendiz's sister-in-law, Yesenia. Ramirez testified that in June 2008, Almendarez was dating Danny Montez and she knew that someone in Montez's family owned a blue van. Prior to the attack on Resendiz, she had seen Montez's brother driving the van through the neighborhood. Ramirez acknowledged, however, that she had never seen defendant, Almendarez or Lopez driving the vehicle.

¶26 Ramirez heard about the attack on Resendez the day after it occurred, and spoke to Yesenia about it. Ramirez subsequently spoke to Resendiz after she was released from the hospital. Based on their conversation and the descriptions that Resendiz gave of her attackers, Ramirez provided Resendiz with the names of Almendarez and Lopez. Ramirez confirmed that

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in June 2008, Almendarez had blonde or light brown "streaks" in her hair. She also confirmed that defendant had a mole or mark on her neck. Ramirez never showed Resendiz pictures of Almendarez or Lopez. She merely provided Resendiz with their names. On cross-examination, Ramirez acknowledged that she was not close with Almendarez or Almendarez's side of the family, but denied that she provided Resendiz with Almendarez's name to exact revenge on, or cause trouble for, her cousin.

¶27 Doctor Michelle Jordan testified that in 2008, she was employed as an assistant medical examiner in the Cook County Medical Examiner's Office. On June 13, 2008, she received an assignment to conduct an autopsy on Resendiz's female stillborn infant, who had died on June 9, 2008, at 1:52 p.m. Based on the fetal measurements, Doctor Jordan determined that the infant was approximately 20 weeks of gestational age at the time of death. An external examination of the infant revealed a "distinctive red discoloration," confirmation that the baby died in utero. Upon conducting an internal examination of the infant, Doctor Jordan determined that "[e]verything was normal in regards to every single organ system in the body. There was no evidence of a disease process, there was no evidence of malformation of any of the organs." She concluded that the infant appeared to have been developing normally.

¶28 In addition to conducting a physical examination of the infant, Doctor Jordan also examined the placenta, the "main organ that delivers all of the nutrients as well as blood flow to the fetus." She explained that in the case of stillborn deaths, examination of the placenta is necessary to determine whether the infant's death in utero was caused by a placental abruption, which is a tear that occurs in the placenta that prevents blood flow and nutrients from reaching

the developing fetus. Doctor Jordan explained that placental abruption is "fairly rare," but that there are certain risk factors that exist that predispose a woman to experience a placental abruption during pregnancy, including: hypertension, cocaine or methamphetamine abuse, prior history of placental abruption, and maternal trauma.

¶29 Here, upon examining the placenta, Doctor Jordan confirmed the existence of placental abruption when she discovered evidence of a blood clot that had indented the placental plate. Based upon her examination, Doctor Jordan found that the abruption occupied "approximately 52 percent of the entire surface area of the placenta." She explained that the measurement was significant because "[a]nytime you have placental abruption over 25 percent involvement of the placental plate, it increases stillborn deaths drastically. Anytime you have a placental abruption that occupies approximately 30 percent of the placental plate, it can cause a woman to go into pre-term labor." Based on her examination of the placenta, Doctor Jordan testified that "[t]here was no question that [there] was a placental abruption" in this case. After determining that a placental abruption occurred during Resendiz's pregnancy, Doctor Jordan then sought to determine the cause of the abruption. She noted that Resendiz's medical history was devoid of prior experiences of placental abruptions during her earlier pregnancies, and upon viewing additional relevant medical records, Doctor Jordan was able to rule out hypertension and drug use as potential causes for the placental abruption in this case. Ultimately, Doctor Jordan determined that the placental abruption that occurred in the instant case was the result of the physical trauma that Resendiz experienced on June 7, 2008. She explained that the assault caused the placental abruption, which ultimately deprived the fetus of oxygen and resulted in "an

affixial-type [of] death."

¶30 After the State rested its case, defendant elected to testify. She described herself as 5'4" and 150 pounds. Defendant described her natural hair color as "dark brown," but acknowledged that she has dyed her hair blonde in the past; however, she maintained that her hair was dark brown in June 2008. She also confirmed that she has a mole on her neck. Defendant acknowledged that the photograph used by the police in the photo array that was shown to Resendiz depicted her when she had blonde hair. She explained that the photo had been taken when she was previously arrested for possession of a controlled substance and had dyed her hair.

¶31 Defendant acknowledged that in 2007, she had a physical altercation with Resendiz. The fight lasted two to three minutes and occurred on the corner of 28th Street and Tripp. Defendant, however, denied having any conversations or additional interactions with Resendiz after their initial altercation. At the time that she was arrested for the 2008 attack on Resendiz, defendant was living with her grandmother and daughter at 2040 South Tripp. She was unemployed and was still on probation for her prior narcotics offense. Defendant admitted that her nickname was Skirts. She explained that she received the nickname in 2000 when she was 14 years old because she used to belong to a church called Luz Del Mundo and was required to wear long skirts. Defendant also acknowledged that she knew both Almendarez and Lopez. At the time of the attack on Resendiz, defendant had known Almendarez for four years and had known Lopez for two months. Before June 2008, defendant "associated" with Almendarez and Lopez around the neighborhood and spent time with them at the local park.

¶32 Defendant denied that she had participated in the June 7, 2008, attack on Resendiz, but

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could not recall where she was at 5 p.m. that evening. She speculated that she was probably spending time with her daughter, but admitted that she was not certain what she was doing at the time. Defendant also denied that she had ever been in a blue van. She acknowledged, however, that she heard about the attack on Resendiz from people in the neighborhood and that she had discussed the attack with her boyfriend, Renee Salazar. When defendant called her boyfriend from the police station after her arrest and informed him that she had been arrested "for the Marilu thing," she explained that she was not acknowledging her involvement in the attack, but was simply referring to the attack that she and her boyfriend had previously discussed.

¶33 Co-defendant Almendarez also exercised her right to testify. She testified that in June 2008, she knew both defendant and Patricia Lopez. Almendarez had known defendant "her whole life" and had been friendly with Lopez for about four years. She denied knowing Resendiz, and explained that the first time she had ever seen Resendiz was in court. Almendarez acknowledged that she had a boyfriend named Daniel Montez and that he was the father of her one-year-old son, but denied that Daniel or anyone in his family owned a blue van. Almendarez further denied that she was involved in the attack on Resendiz on June 7, 2008. Almendarez testified that she was not in the vicinity of 28th and Harding at 5 p.m. that day and was not riding around in a blue van at that time, but she could not recall her precise whereabouts. The first time that Almendarez heard about the attack on Resendiz was when defendant was arrested. Almendarez was subsequently arrested on July 21, 2008. At that time, she had highlights in her dark brown hair, but she did not have blonde hair.

¶34 Almendarez acknowledged that Shaunte Ramirez was her cousin. Although Ramirez had

stated that they did not socialize together, Almendarez testified that they grew up together and attended family functions together ever since they were young. Almendarez identified several photographs showing her and Ramirez together at family gatherings over the years when they were younger. There were four pictures in all, and were taken when Almendarez was 1, 8, and 16 years of age. Almendarez estimated that the final picture showing her and Ramirez together was probably taken in 2000 or 2002.

¶35 On cross-examination, Almendarez acknowledged that defendant's nickname was Skirts and that she, defendant and Lopez spent time together in the summer of 2008. Almendarez further acknowledged that at the time of her arrest, her hair was long and that she had "blonde" highlights. Her hair was much lighter that summer than it was at the time of trial. Although Almendarez was familiar with the neighborhood and had been on the block of Springfield and Harding during the summer of 2008, she denied that she had ever seen Resendiz in that area and further denied that she was present in that area at the time of Resendiz's attack. Almendarez did admit that she talked to defendant about the case and about her testimony before trial.

¶36 At the conclusion of the defense's case, the parties delivered closing arguments. Following deliberations, the jury returned with a verdict finding defendant and Almendarez guilty of robbery and intentional homicide of an unborn child.

¶37 After the jury returned its verdict, the trial court presided over a sentencing hearing. At the sentencing hearing, the trial court, upon hearing the arguments advanced in aggravation and mitigation, sentenced defendant 28 years' imprisonment for intentional homicide of an unborn child and 7 years' imprisonment for robbery. The trial court further ordered the convictions be

merged together. Defendant's post-trial and post-sentencing motions were denied. This appeal followed.

¶38 II. ANALYSIS

¶39 A. Sufficiency of the Evidence

¶40 On appeal, defendant first challenges the sufficiency of the evidence. She contends that she was not proven guilty of intentional homicide of an unborn child beyond a reasonable doubt because the State failed to show that she had actual knowledge that Resendiz was pregnant at the time of the attack or that she acted with the requisite mental state. Specifically, she argues that the State failed to prove that she intended to cause death or great bodily harm to Resendiz and her unborn child or that she knew that robbing Resendiz created a strong probability of death or great bodily harm to Resendiz and her unborn child. Accordingly, defendant urges this court to vacate her conviction outright or reduce her conviction to involuntary manslaughter of an unborn child.

¶41 The State responds that defendant's challenge to the sufficiency of the evidence is without merit given that the evidence demonstrated that Resendiz was visibly pregnant at the time of her attack and that defendant and co-defendants continued to kick and punch Resendiz in the stomach after she also verbally informed them of her pregnant state. The State maintains that this evidence was sufficient to allow the jury to conclude that defendant had actual knowledge of Resendiz's pregnancy at the time of the attack and that she acted with the requisite mental state to support a conviction for intentional homicide of an unborn child.

¶42 Due process requires proof beyond a reasonable doubt to convict a criminal defendant.

People v. Ross, 229 Ill. 2d 255, 272 (2008). In reviewing a challenge to the sufficiency of the evidence, it is not a reviewing court's role to retry the defendant; rather, we must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found each of the essential elements of the crime beyond a reasonable doubt. *People v. Ward*, 215 Ill. 2d 317, 322 (2005); *People v. Hayashi*, 386 Ill. App. 3d 113, 122 (2008). The trier of fact is responsible for evaluating the credibility of the witnesses, drawing reasonable inferences from the evidence, and resolving any inconsistencies in the evidence (*People v. Bannister*, 378 Ill. App. 3d 19, 39 (2007)), and a reviewing court should not substitute its judgment for that of the trier of fact (*People v. Sutherland*, 223 Ill. 2d 187, 242 (2006)). Ultimately, a reviewing court will not reverse a defendant's conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt. *People v. Carodine*, 374 Ill. App. 3d 16, 24 (2007).

¶43 The offense of intentional homicide of an unborn child is set forth in section 9-1.2 of the Criminal Code of 1961 (Criminal Code). That section, in pertinent part, provides:

- (a) A person commits the offense of intentional homicide of an unborn child if, in performing acts which cause the death of an unborn child, he without lawful justification:
 - (1) either intended to cause the death of or do great bodily harm to the pregnant woman or her unborn child or knew that such acts would cause death or great bodily harm to the pregnant woman or her unborn child; or
 - (2) knew that his acts created strong probability of death or great bodily harm to the pregnant woman or her unborn child; and

(3) knew that the woman was pregnant." 720 ILCS 5/9-1.2(a) (West 2008).

¶44 Pursuant to the plain language of the statute, a defendant's "knowledge of pregnancy is an essential element of the offense." *People v. Gillespie*, 276 Ill. App. 3d 495, 499 (1995). The element of knowledge is rarely susceptible to direct proof; rather it is usually established through circumstantial evidence. *Id.* Therefore, to satisfy the knowledge requirement of the statute, the State " 'must present sufficient evidence from which an inference of knowledge can be made.' " *Id.*, quoting *People v. Pinta*, 210 Ill. App. 3d 1071, 1078 (1991).

¶45 Here, we find that there was sufficient evidence to allow a reasonable trier of fact to infer that defendant knew Resendiz was pregnant at the time of the attack. At trial, Resendiz testified that she was 20 weeks pregnant and was "physically showing" when defendant and co-defendants attacked her. Although Resendiz was initially struck from behind, we note that when she fell to the ground she started screaming that she was pregnant in an effort to stop the girls from continuing to kick and punch her. She also attempted to use her arms to protect her stomach. Despite Resendiz's screams and despite being specifically informed of Resendiz's condition, the women continued to physically attack her. Notably, defendant proceeded to kick her directly in the stomach.

¶46 In addition to Resendiz's testimony, several witnesses confirmed that Resendiz's pregnancy was readily apparent. For example, Chicago Police Officer Michael Alesia characterized Resendiz's abdomen as "swollen" and "distended" and testified that her physical appearance was "not consistent with, anything *** except for a pregnancy." Detective Catherine Rolewicz confirmed that Resendiz's stomach was "large" and "protruding" and

testified that she appeared to be pregnant. In addition, Doctor Jordan, who conducted the post-mortem autopsy of the fetus, testified that it was 20 weeks in gestational age and was developing normally at the time of the attack. Based upon the aforementioned testimony, we conclude that the evidence was sufficient to establish that defendant had actual knowledge of Resendiz's pregnancy at the time of the attack. See, e.g., *People v. Halmon*, 225 Ill. App. 3d 259, 279 (1992) (finding that there was sufficient evidence that the defendant knew the victim was pregnant where two of the State's witnesses testified that the victim was "'noticeably pregnant'"); *People v. Shum*, 117 Ill. 2d 317, 361-62 (1987) (finding sufficient circumstantial evidence of the defendant's knowledge of the victim's pregnancy based in part, on testimony from medical experts that the fetus she was carrying was developing normally and was within the expected full-term weight limit).

¶47 Defendant nonetheless argues that her conviction must still be reversed because even if she knew Resendiz was pregnant, she did not act with the requisite mental state to sustain a conviction for intentional homicide of an unborn child. Specifically, she contends that the State merely established that defendant acted with the intent to rob Resendiz not to cause death or great bodily harm to her or her unborn child. At most, defendant argues that her conduct was "reckless" rather than intentional or knowing. Therefore, she maintains that her conviction should be reduced to involuntary manslaughter of an unborn child because it requires a less culpable mental state.

¶48 As set forth above, to sustain a conviction for intentional homicide of an unborn child, the State must establish that the defendant either "*intended* to cause the death of or do great bodily

harm to the pregnant woman or her unborn child or knew that such acts would cause death or great bodily harm to the pregnant woman or her unborn child" or "*knew* that his acts created strong probability of death or great bodily harm to the pregnant woman or her unborn child." (Emphasis added.) 720 ILCS 5/9-1.2(a)(1), (2) (West 2008). "A person intends, or acts intentionally or with intent, to accomplish a result or engage in conduct described by the statute defining the offense, when his conscious objective or purpose is to accomplish that result or engage in that conduct." 720 ILCS 5/4-4 (West 2008). "A person knows, or acts knowingly or with knowledge of *** [t]he result of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that the result is practically certain to be caused by his conduct." 720 ILCS 5/4-5(b) (West 2008).

¶49 The offense of involuntary manslaughter of an unborn child, in contrast, requires that a defendant's acted recklessly, a less culpable mental state than intent or knowledge. 720 ILCS 5/9-3.2 (West 2008). Specifically, section 9-3.2 of the Criminal Code defines the offense as follows: "A person who unintentionally kills an unborn child without lawful justification commits involuntary manslaughter of an unborn child if his acts whether lawful or unlawful which cause the death are such as are likely to cause death or great bodily harm to some individual, and he performs them *recklessly* *** ." (Emphasis added.) 720 ILCS 5/9-3.2 (West 2008). "A person is reckless or acts recklessly when that person consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, described by the statute defining the offense, and that disregard constitutes a gross deviation from the standard of care that a reasonable person would exercises in the situation." 720 ILCS 5/4-6 (West 2008).

¶50 The determination of a defendant's mental state is a question for the trier of fact, and may be inferred from circumstantial evidence. *People v. Garcia*, 407 Ill. App. 3d 195, 201 (2011); see also *People v. Jones*, 404 Ill. App. 3d 734, 744 (2010) (recognizing that a defendant's mental state may be inferred from "the character of the defendant's acts and the nature of the victim's injuries"). Factors to consider in determining whether a defendant acted knowingly or intentionally as opposed to recklessly include: (1) any disparity in the size and strength between the victim and the defendant; (2) the brutality and duration of the beating; (3) the severity of the victim's injuries; and (4) whether the defendant used bare fists or a weapon. *People v. DiVencenzo*, 183 Ill. 2d 239, 251 (1998); *People v. Castillo*, 2012 IL App (1st) 10668, ¶ 53. Although death is "not ordinarily contemplated as a natural consequence of blows from bare fists" (*Jones*, 404 Ill. App. 3d at 748), the absence of weapons does not preclude a finding that the defendant intentionally inflicted great bodily harm on the victim or knew that her actions created a strong probability of death or great bodily harm (see, e.g., *DiVincenzo*, 183 Ill. 2d at 254; *Castillo*, 2012 IL App (1st) 10668, ¶ 62-63).

¶51 Here, defendant's recklessness argument is largely premised on the fact that there were no weapons used during the attack on Resendiz and there was no great size disparity between her and the victim. Although we acknowledge these factors, we find that when viewing the evidence in the light most favorable to the State, a rational trier of fact could find, beyond a reasonable doubt, that defendant intended to inflict great bodily harm on Resendiz and her unborn child or knew that her acts created a strong probability of death or great bodily harm. This was not a simple one-on-one fight between defendant and Resendiz; rather, the record reflects that

defendant was one of four women who attacked Resendiz and struck her to the ground. One unidentified assailant held Resendiz from behind as defendant and co-defendants punched and kicked her in her head, back and pregnant stomach. Despite the fact that Resendiz informed them of her pregnant state, defendant and co-defendants did not stop their assault but continued to beat her. Defendant, in particular, inflicted a blow to Resendiz's stomach. Although defendant attempts to characterize Resendiz's injuries as insubstantial, consisting of bruises, scrapes and some bleeding between her legs, Doctor Jordan testified that the impact of the attack was substantial in that it resulted in a placental abruption that occupied "approximately 52 percent of the entire surface of the placenta." Ultimately, we reiterate that the determination of a defendant's mental state is a "task particularly suited to the jury" and conclude that a rational trier of fact could have concluded that defendant acted with the requisite mental state to sustain a conviction for intentional homicide of an unborn child beyond a reasonable doubt. *Garcia*, 407 Ill. App. 3d at 201, quoting *People v. Moore*, 358 Ill. App. 3d 683, 688 (2005). Accordingly, we uphold defendant's conviction.

¶52 B. Sentencing

¶53 Defendant next challenges her sentence. She contends that she did not receive a fair sentencing hearing because the judge relied on improper aggravating factors in determining her sentence. Specifically, defendant contends that her sentence was imposed based upon the court's unsubstantiated and mistaken belief that the crime against Resendiz was gang-related. She also argues that the court penalized her for continuing to maintain her innocence of the attack on Resendiz during the sentencing hearing. Based upon the court's reliance on these improper

aggravating factors, defendant requests that her sentence be vacated and the matter be remanded for a new sentencing hearing.

¶54 The State responds that the trial court only considered proper aggravating and mitigating factors in imposing defendant's sentence, and thus, defendant is not entitled to a new sentencing hearing.

¶55 Initially, we note that defendant failed to preserve this issue for appeal by failing to raise it properly in the trial court. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (recognizing that to properly preserve an issue for appeal, a defendant must object to the purported error at trial and specify the error in a post-trial motion and that her failure to satisfy both requirements results in forfeiture of appellate review of her claim). Defendant acknowledges her failure to properly preserve this argument but urges this court to consider her claim under the second-prong of plain error review, arguing that the right to be lawfully sentenced impacts a prisoner's fundamental right to liberty. See Ill. S. Ct. R. 615(a); *People v. Ritchley*, 286 Ill. App. 3d 848, 852 (1997). We acknowledge that the "the plain error rule may be invoked if the evidence at a sentencing hearing was closely balanced or if the error was so egregious as to deprive the defendant of a fair sentencing hearing." *People v. Baker*, 341 Ill. App. 3d 1083, 1090 (2003). In addition, we observe that forfeiture is less rigidly applied when the basis for a defendant's claim pertains to the trial judge's conduct. *People v. Zapata*, 347 Ill. App. 3d 956, 964 (2004). Accordingly, we will address the merit of defendant's claim.

¶56 The Illinois Constitution requires a trial court to impose a sentence that achieves a balance between the seriousness of the offense and the defendant's rehabilitative potential. Ill.

Const. 1970, art. I, §11; *People v. Lee*, 379 Ill. App. 3d 533, 539 (2008). To find the proper balance, the trial court must consider appropriate aggravating and mitigating factors, which include: “the nature and circumstances of the crime, the defendant’s conduct in the commission of the crime, and the defendant’s personal history, including his age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment and education.” *People v. Maldonado*, 240 Ill. App. 3d 470, 485-86 (1992). Because the trial court is in the best position to weigh these factors, the sentence that the trial court imposes is entitled to great deference and will not be reversed absent an abuse of discretion. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000); *Lee*, 379 Ill. App. 3d at 539. Moreover, because the ordinary rules of evidence are relaxed at sentencing, a court “may search anywhere within reasonable bounds, for other facts which tend to aggravate or mitigate the offense.” *People v. Sims*, 403 Ill. App. 3d 9, 23 (2010), quoting *People v. La Pointe*, 88 Ill. 2d 482, 495 (1981). Ultimately, a reviewing court may not re-weigh aggravating and mitigating factors in reviewing a defendant’s challenge to her sentence, and it may not substitute its judgment for the trial court merely because it could or would have weighed the factors differently. *People v. Jones*, 376 Ill. App. 3d 372, 394 (2007).

¶57 Where, however, the sentencing judge relies on improper factors and speculation in imposing a defendant’s sentence, the sentence should be vacated and the cause remanded for re-sentencing. *Zapata*, 347 Ill. App. 3d at 964. Generally, it is proper for a court to consider a defendant’s lack of remorse in imposing a sentence, but it may not rely on a defendant’s failure to admit to guilt in deciding to impose a harsher sentence. *People v. Speed*, 129 Ill. App. 3d 348, 349-50 (1984); *People v. Byrd*, 139 Ill. App. 3d 859, 859 (1986). In addition, although a court

may take notice of a defendant's gang involvement or affiliation as it is relevant to a defendant's general moral character, (*Sims*, 403 Ill. App. 3d at 23), it may not heavily rely on that factor in imposing a sentence where there is no evidence that the crime itself was related to the defendant's gang involvement. See, e.g., *Zapata*, 347 Ill. App. 3d at (reversing cause for re-sentencing where the court, in imposing the sentence, indicated that it believed that the shooting was gang-related even though there was no evidence to support that finding); *People v. Gonzalez*, 238 Ill. App. 3d 303, 333 (1992) (finding that the trial court failed to consider the proper requisite statutory factors in imposing the defendant's sentence where it characterized a shooting as "mindless street gang conflict" when there was no evidence the shooting was gang-related).

¶58 Here, at the outset of the sentencing hearing, the State informed the court of relevant details included in defendant's pre-sentencing investigation (PSI) report. Included in the report was defendant's prior conviction for misdemeanor retail theft in Wisconsin Rapids, Wisconsin, as well as a possession of a controlled substance conviction. Defendant was on probation for the narcotics offense at the time of her arrest for the attack on Resendiz. In addition, the State informed the court that "according to police records Maresa Prado was associated with the Lady 26ers gang. That did not come out at trial. That was the subject of a motion *in limine*. But it was—it is, at least according to police reports, a factor."

¶59 Thereafter, the court heard additional evidence in aggravation and mitigation. Specifically, letters from defendant's pastor as well as a family friend were read into the record. These letters attested to defendant's good character. In addition, defendant was afforded the opportunity to address the court in allocution. In her statement, defendant stated, in pertinent

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part:

"I wish to remind you that neither I nor my friends, Melissa Almendarez and Patricia Lopez were involved in the death of the unborn child and robbery. *** I can identify with [Marilu Resendiz] feeling the love and loss and sadness a mother feels *** . I hope she can accept my sincere condolences and one day find closure. I assure you your Honor I'm willing to do everything in my power to put my innocence [aside] and aid [Resendiz] with that closure."

¶60 Ultimately, after hearing the arguments of the parties, the court sentenced defendant to 28 years' imprisonment for intentional homicide of an unborn child and imposed a 7-year sentence for robbery, before merging the convictions. In explaining its sentencing decision, the court recounted the evidence that had been presented in aggravation and mitigation and stated, in pertinent part:

"What I have heard from Ms. Prado is her concern for the life she has lost, and for the life that her parents have lost, and for the life that her 4-year-old daughter is losing. I haven't really heard the kind of remorse that I think truly indicates care for the loss of Ms. Resendez's [*sic*] child and the loss that she has experienced. ***

The indication is that Ms. Prado was a Lady 26er. She denies that she had any gang involvement.

The factors that were presented, both in aggravation and mitigation, as well as the letters presented very heartfelt by the members of Ms. Prado's family and church and, Ms. Prado's letter, which I believe to be superficial and more concern for herself than concern

for the loss of the child.

I agree with the State that there is gang involvement here, that the conduct that was committed by Ms. Prado and Ms. Almendarez on Ms. Risendez [*sic*] perhaps did involve wrong contacts. But they led that life, and they chose that life. And they engaged in conduct that beat and killed this infant with intention, with hostility, with the intention to establish their own superiority, and to establish Ms. Risendez's [*sic*] inferiority. And they did that with their fists, with their legs, with their feet, and they beat that woman into submission, and they beat the child to death.

* * *

Both young women have engaged in conduct that they really haven't acknowledged or taken responsibility for in any significant way whatsoever, yet they don't have significant backgrounds. The crime is serious and does deserve a statement that goes to any gang member that is seated out there."

¶61 Here, we do not find that the court improperly implicitly or explicitly imposed a harsher sentence based on defendant's continued claim of her innocence; rather, the court's statements when read as a whole indicate that it focused on defendant's lack of remorse when imposing her sentence. Because a defendant's lack of remorse is an appropriate factor to consider, we find that the court did not err in making note of this factor in sentencing defendant. See, *e.g.*, *People v. Morando*, 169 Ill. App. 3d 716, 728 (1988). However, we do find that there is nothing in the record to substantiate the court's finding that the attack on Resendiz was gang-related. Although there was some evidence to support the court's conclusion that defendant was a gang member

based on information included in a police report identifying defendant as a Lady 26er, there was nothing to establish the relevance of this fact in relation to the attack on Resendiz. Thus, the court's consideration of this evidence in aggravation was improper; however, remand for re-sentencing is not necessary unless this was a "dominant" factor in sentence the court imposed on defendant. *Sims*, 403 Ill. App. 3d at 24; *Zapata*, 347 Ill. App. 3d at 966. Here, we do not find that defendant's gang affiliation was a "dominant" factor in the sentence imposed by the trial court. We note that a reviewing court should not focus on a few words or statements made by the trial court, but must consider the record as a whole when reviewing the propriety of a sentence. *Sims*, 403 Ill. App. 3d at 24. In this case, the court's comment was made during the its comprehensive recitation of the multitude of aggravating and mitigating factors against defendant including the lack of violent crimes in her background and the letters that were submitted on her behalf. Because we find that the court's consideration of defendant's gang involvement and its relevance to the attack on Resendiz was not a dominant factor in the court's sentencing decision, we affirm the sentence imposed by the trial court. See *Sims*, 403 Ill. App. 3d at 24.

¶62 III. CONCLUSION

¶63 Accordingly, for the aforementioned reasons, we affirm the judgment of the circuit court.

¶64 Affirmed.