SECOND DIVISION
June 10, 2014

No. 1-12-2942

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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. 09 CR 19800
	)	
TERRENCE GALLOWAY,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Presiding Justice Harris and Justice Pierce concurred in the judgment.

O R D E R

¶ 1 *HELD*: Defendant is not entitled to a new trial following his conviction of first degree murder, attempted first degree murder, and aggravated battery with a firearm, where trial court properly denied defendant's motions to suppress and concluded that sufficient evidence supported the verdict; defendant was not entitled to a reduced sentence where trial court did not misapply the firearm enhancement. Judgment affirmed.

¶ 2 Following a jury trial, defendant, Terrence Galloway, was found guilty of first degree murder, attempted first degree murder, and aggravated battery with a firearm. The circuit court denied defendant's motion for a new trial and sentenced him to a total of 81 years' imprisonment, which included 50 years of enhancements based on defendant's use of a firearm in the underlying first degree murder and attempted first degree murder offenses. On appeal, defendant contends that the circuit court erred by (1) denying his motion to quash arrest and suppress evidence; (2) denying his motion to suppress evidence of witness Xavier Miller's identification of defendant in a lineup; (3) concluding that sufficient evidence supported the jury's verdict; and (4) imposing a sentence that violated defendant's constitutional rights. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On the evening of October 9, 2009, Randall Knox, David Etheridge, Stacy Adams, and possibly others were standing outside on the 700 block of North Harding Avenue in Chicago, Illinois when they were approached by two men. One of those men pulled out a gun and began firing. Etheridge was wounded in the shoulder, and Adams was killed. Defendant was observed running from the area and discarding a revolver. He was subsequently arrested and charged with first degree murder, attempted first degree murder, aggravated battery with a firearm, unlawful use of a weapon by a felon, and aggravated unlawful use of a weapon. Prior to trial, the circuit court heard and denied defendant's motions to suppress identification testimony and to quash arrest and suppress evidence. The jury found defendant guilty of first degree murder, attempted first degree murder, and aggravated battery with a firearm, and the trial court sentenced him to a total of 81 years' imprisonment.

¶ 5 A. DEFENDANT'S MOTION TO QUASH ARREST AND SUPPRESS EVIDENCE

¶ 6 In the circuit court, defendant moved to quash his arrest and suppress evidence, arguing that he was impermissibly seized by police officers in violation of his Fourth Amendment rights during the chase that led up to his arrest. During the motion hearing, Chicago Police Officer O'Brien testified that on the evening of October 9, 2009, he along with Officers Sean Bottom and Kevin Stanula were conducting an unrelated traffic stop near 651 North Springfield Avenue, which is approximately one city block west of where the underlying shooting occurred.

¶ 7 Officer O'Brien testified that he heard three loud gunshots, which sounded to be coming from the northwest in the area of Harding Avenue. Two black males wearing hooded sweatshirts then ran past the officers, and Officer Stanula began chasing those individuals. About twenty to thirty seconds after the shots were fired, Officer O'Brien saw defendant, wearing black jeans and a black hooded sweatshirt with the hood up, running out of the alley from Huron Street and heading southbound on Springfield Avenue, which is one block east of Harding Avenue.[1] The defendant got into the driver's seat of a parked minivan, and Officer O'Brien pulled his marked squad car "nose to nose" with the van. Able to make eye contact with the defendant at this point, Officer O'Brien observed that he had a goatee. Officer O'Brien exited his vehicle with his weapon drawn and told defendant, "[L]et me see your hands, police." Instead of complying, defendant jumped out of the driver's seat and fled southbound on Springfield Avenue. Officer O'Brien pursued defendant on foot. According to Officer O'Brien, while defendant was running, his hood came down and Officer O'Brien observed braids in his hair and a red design on the back of his sweatshirt. Officer O'Brien described these observed features in the radio flash message he made while in pursuit.

[1] Defendant does not dispute that he was the individual Officer O'Brien saw running.

¶ 8 As defendant was running, Officer O'Brien also witnessed defendant clasping the right side of his waist as he headed back toward the alley, causing Officer O'Brien to suspect that defendant had a weapon or a firearm on his side. Officer O'Brien eventually lost sight of defendant but later received confirmation from Officer Stanula that he picked up the chase of defendant based on Officer O'Brien's description of him in the flash message.

¶ 9 Officer Stanula also testified at the suppression hearing. Consistent with Officer O'Brien's testimony, he stated that he began chasing the two individuals the officers originally saw after hearing the gunshots; he then returned to assist Officer O'Brien once he heard the flash message. He found Officer O'Brien at the mouth of the alley on Springfield Avenue and proceeded to run after defendant in the direction Officer O'Brien had indicated. Officer Stanula testified that he saw an individual matching defendant's description walking southbound on Harding Avenue. Officer Stanula told defendant, "[S]top, police," but rather than complying, defendant started running westbound through a vacant lot. Officer Stanula continued his pursuit, losing sight of the defendant only briefly. Then, when Officer Stanula was approximately 10 to 15 feet behind defendant, he observed defendant "remove a dark revolver from [his] waistband and throw it over a fence." Officer Stanula continued his chase until catching up with defendant at Orr High School, a few houses down and across the street from where Officer Stanula saw him throw the gun. After placing defendant under arrest with the help of Chicago Police Department Sergeants Olson and Stack, Officer Stanula ran back to the scene to secure the weapon.

¶ 10 At the conclusion of the officers' testimony, defendant's counsel argued that there was a "constructive seizure" of defendant without probable cause or reasonable suspicion either when Officer O'Brien pulled the squad car up to the van and ordered defendant to stop or at some point during Officer Stanula's chase. The circuit court denied the motion. It found that defendant was

not seized for purposes of the Fourth Amendment because he continued to flee when the officers asked him to stop. And even if his encounters with the officers could constitute a seizure, the circuit court concluded, they had sufficient reasonable suspicion to stop defendant based on his running from an area where the officers had heard gunshots and also had probable cause for an arrest after Officer Stanula witnessed defendant discarding the revolver.

¶ 11 B. DEFENDANT'S MOTION TO SUPPRESS IDENTIFICATION

¶ 12 Defendant also moved to suppress evidence of witness Xavier Miller's identification of him during an October 10, 2009 lineup, contending that the lineup was unduly suggestive based on certain differences in the appearances between defendant and the other lineup participants. Chicago Police Department Homicide Detective Gregory Jones, who was assigned to investigate the Stacy Adams homicide, testified at the hearing on defendant's motion. Detective Jones explained that, as part of the homicide investigation, he and a partner conducted a lineup comprised of defendant and three other individuals from the 11th District lockup. According to Detective Jones, defendant was allowed to select his position in the lineup, and chose position number two. All of the individuals in the lineup were seated. Defendant had hair "braided backwards," a goatee, and a moustache, and was wearing light-colored sweatpants and a white short-sleeve T-shirt. As to the other participants, individual number one in the lineup was wearing blue jeans; individual number three had some facial hair but not a full beard and was wearing blue jeans and a gray long-sleeve shirt; and individual number four had a full beard and was wearing blue jeans and a dark-color, long-sleeve sweatshirt.

¶ 13 Detective Jones testified that, before viewing the lineup, witness Xavier Miller reviewed the Chicago Police Department's Lineup Advisory Form, which instructs witnesses that the suspect may not be in the lineup, that the witness was not required to make an identification, and

that the witness should not assume that the person administering the lineup knows who the suspect is. Miller read and signed the form, viewed the lineup, and identified defendant.

¶ 14 After hearing this evidence and reviewing photographs of the lineup, the circuit court denied defendant's motion to suppress, finding:

> "It is the Defense'[s] burden to show that the line-up identification was, in fact, unduly suggestive, blatantly unfair and a violation of defendant's due-process rights. I looked at the photos here and I've been looking at them throughout the arguments. I know [defendant's counsel] says that it jumps out that this defendant is the perpetrator; however, I don't see that in these photographs. I will grant that the defendant is the only one with white pants here but it does appear that three out of four gentlemen have white or light-colored shirts on. One of them also has a T-shirt on similar to defendant's T-shirt. I also note that the ages, the skin tone of the four in the line-up are basically the same.
>
> There's no requirement that the perpetrators have to all wear the same clothes or look exactly alike, albeit I can see an argument that maybe white stands out more than blue jeans, but I don't think anything besides that can even be argued or inferred that suggests that. I believe this is not an unduly suggestive line-up. I believe that the witness could make an identification of any of those four, that there was nothing screaming out that this person

was the perpetrator. Respectfully, the motion to suppress the identification is going to be denied."

¶ 15 C. DEFENDANT'S TRIAL[2]

¶ 16 At trial, Randall Knox, who was with Stacy Adams and David Etheridge the night of the shooting, testified for the State. He stated that two people approached them around 8:30 p.m. Knox recognized one of the men as "Q" but did not know the other individual, who had his hands in the pockets of his hooded sweatshirt. Unsure why the two men approached them, Knox began to move away from the sidewalk and toward the street. According to Knox, the second man walked up to Etheridge and said, "[W]hat's up." At this point, Knox was in the street, about twelve feet away from the rest of the group. The man then pulled out his gun with his right hand, and Knox started to run, hearing gunshots as he was about twenty steps away. Knox headed south toward Huron Street and stopped once he reached the parking lot at Orr High School. From there, Knox witnessed the police officers arrest defendant. Knox identified defendant in a photo array and in court as the person he saw with the gun.[3]

¶ 17 Knox acknowledged that he did not speak with the police about what he witnessed until November 12, 2009, when he was arrested for an unrelated offense. At that time, he also was on probation for a narcotics offense. The charge from his November 12, 2009 arrest ultimately was dismissed.

¶ 18 Xavier Miller also testified for the State. Miller had known Adams for seven or eight years because Miller's mother was Adams's foster mother. According to Miller, on the night of

[2] At trial, various witnesses testified on issues not directly relevant to defendant's appeal. The pertinent testimony is summarized below.

[3] Chicago Police Department Detective Russell Egan also testified for the State concerning Knox's photo array identification of defendant.

the shooting, he was on the third floor of a friend's house at 706 North Harding Avenue.[4] While standing in front of a window overlooking Harding Avenue, he heard a commotion and voices getting louder at the north end of the street followed by three gunshots. He then saw two people run north and another person run south down Harding Avenue. Although Miller could not see the faces or the gun, he did observe Adams fall to the ground. Miller ran down the stairs but was not moving quickly because of a previous gunshot wound to his foot. Once he exited the building, Miller saw defendant wearing a black hooded sweatshirt and running through a vacant lot towards Orr High School with a black object in his right hand. Later that night, Miller saw defendant in the back of a police car. The next day, Miller went to the police department and identified defendant in a lineup. Miller additionally testified to having five prior felony convictions.

¶ 19 The State also called David Etheridge, a victim of the shooting, to testify. Consistent with Knox's testimony, Etheridge stated that he was drinking and hanging out with Knox and Adams on the sidewalk around 700 North Harding Avenue when two men approached them. Etheridge recognized "Q" but not the man walking with him, who was wearing a dark hooded sweatshirt with his hands in the pockets. This second man walked up to Etheridge and said, "Little Dave, what's up." After Etheridge responded, the man took out a gun, and Etheridge saw a flash as it went off.

¶ 20 Etheridge testified that he started running, eventually realizing that he had been shot in the shoulder. He ran home and was later taken by ambulance to a hospital for treatment and was

[4] Patricia Gutierrez, an investigator for the Cook County Public Defender's Office, testified that she took photographs while at the crime scene and noted that there was no building at 706 North Harding Avenue—the building Miller allegedly was in on the night of the shooting. Gutierrez, however, also acknowledged that the building at 708 North Harding Avenue was a three-story building with a window on the third floor facing Harding Avenue.

given pain medication. According to Etheridge, because he was scared and was unaware that anyone else had been hurt, he lied to the paramedics about where and how he was shot. But at the hospital, after police told Etheridge that Adams had been killed, Etheridge admitted that he was shot on Harding Avenue and had been with Adams. After receiving treatment for his injuries, Etheridge went to the police station. There, he related how he actually had been shot and also identified defendant in a lineup as the person who shot him.[5]

¶ 21 At times, Etheridge's trial testimony was inconsistent with his prior grand jury testimony. For example, before the grand jury Etheridge stated that he had gone to a liquor store alone before the shooting, but during trial he thought that others had gone with him. His grand jury testimony additionally implied that he may have started to run before any shots were fired. But at trial, Etheridge unequivocally stated, "I was shot and then I ran."

¶ 22 During his trial testimony, Etheridge also acknowledged that at the time of trial he had a pending driving under the influence case, which had been upgraded to a felony, as well as two prior felony convictions. Additionally, the Cook County State's Attorney paid for his meals and a hotel room for the weekend prior to his testifying.

¶ 23 Officers O'Brien and Stanula also testified for the State, and their testimony largely comported with the testimony they provided at the hearing on defendant's motion to quash arrest and suppress evidence. Officer Stanula added that the area where he observed defendant throw the handgun was a ComEd power facility. Because the fence surrounding the facility was locked, Officer Stanula was unable to recover the gun when he returned to the area after defendant's arrest. But he was able to look through the gate and see the black revolver in the

[5] Chicago Police Department Detective David Roberts assisted in assembling the lineup Etheridge viewed; he provided testimony consistent with Etheridge's.

approximate area where defendant had thrown it. He called for other officers to secure the scene, and waited for them to arrive. Officer Stanula later learned that the gun was recovered.

¶ 24 Ellen Chapman, a forensic scientist with the Illinois State Police Crime Lab, testified regarding the gunshot residue testing on defendant's hands and sweatshirt. From the collected hand samples, Chapman concluded that defendant may not have discharged a firearm with either hand, but if he did, "then the particles were removed by activity, were not deposited, or were not detected by this procedure." Chapman also explained that she tested the exterior and some interior portions of the right and left cuff areas on defendant's hooded sweatshirt. Based on her analysis, she concluded that "the sampled area of the right cuff of the sweatshirt contacted a gunshot residue related item or was in the environment of the discharged firearm."

¶ 25 Illinois State Police forensic scientist, Lisa Kell, also testified for the State regarding her analysis comparing the DNA profiles from the recovered revolver with defendant's DNA. According to Kell, the swabs from the revolver contained a low, but acceptable, amount of DNA for testing; Kell determined that the swabs included DNA from at least two, and possibly up to four, individuals. Comparing this DNA to defendant's, Kell concluded that defendant could not be "excluded as having contributed to the mixture of DNA profiles identified" on the revolver swab but that the profile also would not exclude one in every four black persons, one in every eight white persons, and one in every six Hispanic persons.

¶ 26 Forensic scientist Marc Pomerance testified at trial as a firearms expert. According to Pomerance, based on his testing and analysis, the fired bullets and bullet fragments removed from Stacy Adams's body by the medical examiner's office came from the revolver.

¶ 27 After the trial, the jury found defendant guilty of first degree murder of Stacy Adams, attempted first degree murder of David Etheridge, and aggravated battery with a firearm. It also

found that during the commission of the offense of first degree murder, defendant personally discharged a firearm that proximately caused the death of Stacy Adams; and during the commission of the offense of attempted murder, defendant personally discharged a firearm that proximately caused great bodily harm to David Etheridge. The circuit court denied defendant's motion for a new trial on August 8, 2012. On August 24, 2012, the court sentenced defendant to 25 years for the first degree murder count with an additional 25 years for the firearm enhancement, and 6 years for the attempted murder count with an additional 25 years for the firearm enhancement, to be served consecutively, for a total of 81 years' imprisonment in the Illinois Department of Corrections. Defendant appeals, and we have jurisdiction pursuant to Illinois Supreme Court Rules 603 and 606.

¶ 28 ANALYSIS

¶ 29 On appeal, defendant contends that the circuit court erred by (1) denying his motion to quash arrest and suppress evidence; (2) denying his motion to suppress witness Xavier Miller's identification of defendant in a lineup; (3) finding that sufficient evidence supported the jury verdict; and (4) imposing a sentence that violated defendant's constitutional rights. As explained below, we conclude that all of defendant's arguments lack merit.

¶ 30 A. DEFENDANT'S MOTION TO QUASH ARREST AND SUPPRESS EVIDENCE

¶ 31 On appeal, defendant maintains that Officer O'Brien's unsuccessful attempt to stop defendant when he was in the van amounted to a seizure without probable cause such that "any evidence subsequently retrieved by police is subject to the fruit of the poisonous tree doctrine and accordingly should be suppressed." We can summarily dismiss this argument because there was no seizure. And without a seizure, there is no Fourth Amendment violation. *California v. Hodari D.*, 499 U.S. 621, 624-25 (1991).

¶ 32 In *Hodari D.*, the U.S. Supreme expressly rejected the same argument defendant advances here. There, the Court explained that, for purposes of the Fourth Amendment, the term "seizure" "does not remotely apply *** to the prospect of a policeman yelling 'Stop, in the name of the law!' at a fleeing form that continues to flee. That is no seizure." *Id.* at 626. Here, as in *Hodari D.*, defendant did not submit to the officer's show of authority but rather continued his flight. Defendant, therefore, was not seized.

¶ 33 *United States v. Mendenhall*, 446 U.S. 544 (1980), cited by defendant, is not to the contrary. In *Mendenhall*, the Court held that "a person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Id.* at 554. According to defendant, because a reasonable person in his position would not have felt free to leave when Officer O'Brien ordered him to stop, under the objective test articulated in *Mendenhall*, he was seized despite his continued flight. The defendant in *Hodari D.* unsuccessfully proffered a similar argument, which the Supreme Court also rejected. In distinguishing *Mendenhall*, the Court explained that the *Mendenhall* test "states a *necessary*, but not a *sufficient*, condition for seizure," (emphases in original) (499 U.S. at 628), but even if this objective standard is satisfied, an officer's show of authority does not amount to a seizure unless the individual actually complies, *id.* at 629. Here, defendant did not comply but rather continued to flee. Without evidence of a Fourth Amendment seizure, the circuit court properly denied defendant's motion.

¶ 34 B. DEFENDANT'S MOTION TO SUPPRESS IDENTIFICATION EVIDENCE

¶ 35 Defendant next argues that the lineup Xavier Miller viewed was impermissibly suggestive, requiring its suppression. Specifically, defendant contends that "he was clearly

distinguishable from the other three individuals" in the lineup because, unlike the others, he was not wearing jeans, was wearing a white shirt, and had braided hair, a goatee, and a moustache.

¶ 36 As an initial matter, we note that defendant does not appear to have included any photographs of the lineup for our review. As the appellant, defendant "bears the burden of providing a reviewing court with a complete record sufficient to support his claims of error, and any doubts that arise from the incompleteness of the record will be resolved against" him. *People v. Lopez*, 229 Ill. 2d 322, 344 (2008). Based on our review of the record available to us, the circuit court did not err in denying defendant's motion to suppress.

¶ 37 In reviewing a ruling on a motion to suppress, the trial court's "findings of fact and credibility determinations *** are accorded great deference and will be reversed only if they are against the manifest weight of the evidence." *People v. Slater*, 228 Ill. 2d 137, 149 (2008). The ultimate legal question as to whether suppression was appropriate is reviewed *de novo*. *Id.* (citing *People v. Nicholas*, 218 Ill. 2d 104, 116 (2005)).

¶ 38 To prevail on a motion to suppress evidence of an identification, the defendant bears the burden of proving "that a pretrial identification was impermissibly suggestive," (*People v. Enis*, 163 Ill. 2d 367, 398 (1994)), such that it creates " 'a very substantial likelihood of irreparable misidentification,' " [citation] (*People v. Love*, 377 Ill. App. 3d 306, 311 (2007)).

¶ 39 It is well established that participants in a lineup need not be "identical or near identical." *People v. Faber*, 2012 IL App (1st) 093273, ¶ 57. For example, Illinois courts routinely recognize that a lineup is not impermissibly suggestive where "the defendant was the only person in the lineup with braided hair." *Love*, 377 Ill. App. 3d at 311; see also *People v. Kelley*, 304 Ill. App. 3d 628, 638 (1999) ("[D]efendant's hairstyles in the lineups (both the french braids and the Afro) were not so distinctive that they rendered the lineups unduly suggestive."); *People v.*

Trass, 136 Ill. App. 3d 455, 463 (1985) ("The fact that [defendant] was the only man in the lineup with braided hair does not establish that the lineup was impermissibly suggestive ***.").

¶ 40 This court similarly has rejected arguments that minor differences in clothing render a lineup unduly suggestive. See *Faber*, 2012 IL App (1st) 093273, ¶ 57 ("The fact that [defendant] was the only person wearing a sleeveless T-shirt a witness described the offender as wearing is not sufficient to render the lineup suggestive."); *People v. Johnson*, 222 Ill. App. 3d 1, 7-8 (1991) (rejecting claim "that the lineup was suggestive because [defendant] was the only one wearing red trousers similar to those worn by the robber"). Such differences in the appearances of the individuals in the lineup go to the weight of the witness's identification as opposed to its admissibility. *Johnson*, 222 Ill. App. 3d at 7-8.

¶ 41 Here, the circuit court viewed the photos from the challenged lineup and concluded that it was not unduly suggestive. Specifically, the court found that while "defendant is the only one with white pants," "three out of four gentlemen have white or light-colored shirts on," with one of the individuals wearing "a T-shirt *** similar to the defendant's T-shirt." The court further "note[d] that the ages, the skin tone of the four in the line-up are basically the same." Additionally, there is no allegation that the shooter was wearing white sweatpants such that defendant's wearing of those pants in the lineup would be improperly suggestive of his involvement. Nor does defendant allege that officers forced him to wear a particular outfit or fix his hair a certain way. See *Johnson*, 222 Ill. App. 3d at 8 (drawing a distinction between a lineup where defendant was wearing pants he was either already wearing or had personally selected (which was not impermissibly suggestive) with a lineup where "the police forced defendant to change from the clothes he was wearing to the trousers and coat that had been implicated in the robbery" (which was impermissibly suggestive)).

¶ 42 In light of the trial court's findings—which we cannot say are against the manifest weight of the evidence, particularly because defendant has not identified any photographs of the lineup in the record for us to review—and recognizing the established principle that differences in the individuals' appearances typically go to weight, not admissibility, we agree with the trial court that the minor differences identified by defendant did not render the lineup impermissibility suggestive to require its suppression.

¶ 43 C. SUFFICIENCY OF THE EVIDENCE SUPPORTING DEFENDANT'S CONVICTION

¶ 44 Defendant also contends that the circuit court erred in adopting the jury's verdict, arguing that the evidence was insufficient to prove him guilty beyond a reasonable doubt. Specifically, defendant argues that certain witnesses were not credible, that the "circumstances surrounding" his arrest create reasonable doubt as to his guilt, and that the "forensics *** do not implicate" him. None of these arguments provides a basis for reversal.

¶ 45 As the reviewing court, "[w]hen a defendant challenges the sufficiency of the evidence" we do not "retry the defendant." *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Rather, we "must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* Because "[t]he trier of fact is best equipped to judge the credibility of witnesses," we must give "due consideration *** to the fact that it was the trial court and jury that saw and heard the witnesses." *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). Thus, "a jury's findings concerning credibility are entitled to great weight." *Id.* at 115. We "will not substitute [our] judgment for that of the trier of fact on issues involving the weight of evidence or the credibility of witnesses." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009). "A conviction shall not be reversed simply because the defendant claims a witness was not credible." *People v. Diaz*,

297 Ill. App. 3d 362, 369 (1998). This court accordingly "will not reverse a conviction unless the evidence is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt." *Evans*, 209 Ill. 2d at 209.

¶ 46 First, defendant contends that Miller's, Etheridge's, and Knox's testimony was all "unreliable," focusing largely on their prior criminal convictions and minor inconsistencies in their testimony. For example, defendant contends that Knox's identification of defendant is "unreliable" because the shooter had his hood up and Knox did not speak with police until he was arrested a month later. Miller was not credible, according to defendant, because there is not a building at 706 North Harding Avenue (where Miller stated that he was when the shooting occurred) and Miller's timeline for getting down the stairs and seeing defendant running away "is not plausible." Lastly, defendant argues that Etheridge was "unreliable" because he initially lied about the circumstances surrounding his gunshot wound, had been drinking and had taken pain medication before identifying defendant in a lineup, received a hotel stay and meals from the State's Attorney's Office prior to testifying, and did not remember certain details about the night of the shooting, such as the hospital that treated him or what "Q" was wearing. Such credibility issues, however, are for the jury to resolve. *People v. Howard*, 376 Ill. App. 3d 322, 329 (2007) ("Whether minor inconsistencies in testimony irreparably undermined the credibility of the State's witnesses was a matter for the trier of fact to decide. The same can be said of the impact of [the witness's] three felony convictions on the credibility of his testimony."). Nor has defendant established that their testimony was "so unreasonable, improbable or unsatisfactory" to create a reasonable doubt as to his guilt.

¶ 47 Next, defendant maintains that the "circumstances surrounding" his arrest cast reasonable doubt as to his guilt because Officers O'Brien and Stanula "had no reason to suspect [defendant]

of committing any crimes." To the contrary, viewing the evidence in the light most favorable to the prosecution, we agree with the State that the timeline of events leading up to defendant's arrest supports rather than undermines his conviction. Namely, defendant was seen running from the area where officers heard gunshots, continued to flee despite the officers' multiple requests that he stop, and was observed discarding a revolver during his flight. While defendant ignores much of this evidence, arguing that "it is a natural reaction to run away from gunfire," the jury was entitled to consider it and could reasonably conclude that defendant's conduct supported his guilt.

¶ 48 Finally, defendant argues that the forensic evidence in this case does not implicate him. In advancing this argument, defendant does not raise any chain of custody issues or otherwise challenge the validity of the forensic evidence. Instead, in direct contravention of the proper standard of review, he effectively asks us to ignore unfavorable evidence and draw inferences from the forensic evidence in his favor. As a result, his arguments lack merit.

¶ 49 Defendant, for example, emphasizes the absence of gunshot residue on his hands and attempts to explain the residue on his sweatshirt by arguing that it "could have been from contact with a gunshot related item" such as a police officer or handcuffs. But the jury also reasonably could have concluded that any gunshot residue on his hands was removed during his flight and subsequent arrest, and that his sweatshirt contained residue because he fired the gun.

¶ 50 Similarly, although defendant does not dispute that the ballistics evidence demonstrated that the bullets and bullet fragments removed from Adams's body matched the recovered revolver, he argues that this evidence casts reasonable doubt as to his guilt because Pomerance, the firearms expert, "could not testify as to who shot the gun, or when the gun was used." But

other witnesses linked defendant to the gun: namely, Officer Stanula who testified that he observed defendant throw the gun over the fence.

¶ 51 Defendant additionally maintains that the DNA evidence casts reasonable doubt on his conviction because Kell, the forensic scientist, concluded that the "small sample of recovered DNA was actually a mixture of DNA, from individuals whose race [she] could not identify." But the jury was also entitled to credit testimony from Kell that the DNA profile did not exclude defendant. The forensic evidence, therefore, does not provide a basis for reversal.

¶ 52 Thus, viewing the evidence in the light most favorable to the prosecution, we conclude that the State presented sufficient evidence to prove defendant's guilt beyond a reasonable doubt.

¶ 53 D. DEFENDANT'S CHALLENGE TO HIS SENTENCE

¶ 54 Lastly, defendant argues that sentencing him with "two 25-year firearm enhancements was unconstitutional as it subjected him to double enhancements, violated his due process rights and the proportionate-penalties clause." We are not persuaded.

¶ 55 Under the Illinois Criminal Code, felonies involving the use of a firearm are subject to certain mandatory sentencing enhancements. Relevant here, 720 ILCS 5/8-4(c)(1)(D) (2012) (applying to attempted first degree murder), and 730 ILCS 5/5-8-1(a)(1)(d)(iii) (2012) (applying to first degree murder) both provide in relevant part that if, during the commission of the offense, the defendant "personally discharged a firearm that proximately caused great bodily harm, permanent disability, permanent disfigurement, or death to another person," a mandatory "25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court."

¶ 56 Here, defendant's arguments challenging his sentence all rely on the faulty premise that the circuit court applied the firearm enhancement "multiple times for the same act." From this

flawed assumption, defendant argues that his sentence (1) includes an improper double enhancement because "a single factor, the discharge of a firearm" was used to enhance his overall sentence twice; (2) "clearly falls outside the statutory limits" because it "was increased twice for the same act of discharging a firearm"; and (3) violates the proportionate penalties clause because "a second firearm enhancement for the same discharge of the weapon and after a firearm enhancement has already been applied, is cruel, degrading and wholly disproportionate to the offense of attempted murder."

¶ 57 Contrary to defendant's position, the two firearm enhancements were not based on "the same discharge of the weapon" but on separate and distinct discharges which resulted in separate convictions and separate sentences for the first degree murder of Stacy Adams and attempted first degree murder of David Etheridge. Indeed, the jury expressly made findings supporting two separate firearm enhancements. It concluded that the State proved that (1) "during the commission of the offense of the first degree murder the defendant personally discharged a firearm that proximately caused death to Stacy Adams"; and (2) "during the commission of the offense of attempt first degree murder the defendant personally discharged a firearm that proximately caused great bodily harm to David Etheridge."

¶ 58 Notably, defendant does not contend that he was improperly convicted of multiple offenses (*i.e.*, murder and attempted murder) based on the same underlying act in violation of the one-act, one-crime doctrine. See *People v. Miller*, 238 Ill. 2d 161, 165 (2010) ("Multiple convictions are improper if they are based on precisely the same physical act."). Nor does he identify any authority for the proposition that multiple discharges of a firearm—which properly support separate convictions and sentences for murder and attempted murder—nevertheless

constitute a single act for purposes of the firearm enhancement. Accordingly, defendant's challenge to his sentence lacks merit.

¶ 59 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 60 Affirmed.