No. 2—09—0165
Order Filed January 20, 2011

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 08—CF—2503
JERRY L. LEE,	)	Honorable Christopher R. Stride,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Bowman concurred in the judgment.

ORDER

Held: (1) Where the defendant knowingly pointed a gun in the direction of another and fired the gun, the trial court properly refused to give a voluntary manslaughter instruction;
(2) The trial court did not abuse its discretion in precluding evidence of the victim's violent character and propensity for violence because the proffered evidence was not based on the personal knowledge of the witnesses, was not relevant, or was allowed through other sources;
(3) The State proved beyond a reasonable doubt that defendant did not act in self defense.

Following a jury trial at which he was convicted of the lesser-included offense of second degree murder (720 ILCS 5/9—1(a)(1) (West 2008)), defendant, Jerry L. Lee, appeals. On

appeal, defendant contends that the trial court erred: (1) by not instructing the jury on voluntary manslaughter; and (2) by refusing to admit evidence of the victim's violent character and propensity for violence. Defendant also contends that the State did not prove beyond a reasonable doubt that defendant did not act in self-defense. We affirm.

The following summary is taken from the record on appeal. On June 20, 2008, Adan Rubio, the victim, was killed as a result of gunshot wounds to his head and back. At the same time, Humberto Canchola was shot in the foot. Defendant was charged by complaint with two counts of first-degree murder and one count of attempted first-degree murder. On July 16, 2008, a six-count indictment alleging the first-degree murder of Rubio was filed against defendant. Three counts charged first-degree murder; the remaining three counts included the firearm enhancement pursuant to section 5—8—1(a)(d)(iii) of the Unified Code of Corrections (730 5/5—8—1(a)(d)(iii) (West 2008), seeking a sentencing enhancement of 25 year to natural life because defendant was alleged to have personally discharged a firearm causing the death of Rubio. Defendant pleaded not guilty to all counts. On September 30, 2008, defendant filed his affirmative defense of self-defense.

On November 5, 2008, defendant filed a motion *in limine* seeking to admit state-of-mind evidence at trial concerning threats made against him by members of the Latin Kings street gang, and the fear for his life that the threats caused. Also on that date, the State filed a motion *in limine* seeking to bar defense testimony concerning the victim's character.

Two days later, on November 7, 2008, the State filed another motion *in limine* to admit testimony about gang culture and the specific gang affiliations of various witnesses, including defendant. On November 12, 2008, defendant filed a supplemental motion *in limine* to bar the

State from introducing evidence about defendant's gang affiliation and to prevent the state from presenting a purported gang expert to testify about defendant's motives.

On November 14, 2008, all the motions *in limine* were heard. The trial court held that defendant could only elicit evidence that was specifically related to gang signs or symbols, comments made by Latin King gang members, or incidents with Latin King gang members or people involved in the shooting. The trial court also held that testimony about gang activity was relevant and admissible on the issues of defendant's motive for the shooting, his fear (or lack), or any reason to display his gun, and they could be used in argument on the issue of self-defense. The trial court also held that character evidence would be allowed with the proper foundation.

On December 1, 2008, defendant filed a second supplemental motion *in limine* that proffered the expected testimony of various defense witnesses regarding specific incidents between defendant and the Latin Kings. On December 3, 2008, the trial court denied defendant's second supplemental motion *in limine*, barring testimony of defendant's friend, Chad Presswell, describing that he was shot in the back in a gang-related incident if Presswell was unable to identify the shooter as a member of the Latin Kings street gang. The trial court also barred further testimony from the various other witnesses. In addition, the State nol-prossed those counts of the indictment that were not seeking the enhanced penalty, namely, counts 4-6.

The jury was selected, and the trial commenced. Clara Aleman testified that she was Rubio's mother. Aleman identified a photo of Rubio, and she testified that, On June 20, 2008, at about 10 p.m., she had last seen Rubio alive.

Alfonso Ramos testified that, on June 20, 2008, at 10:27 p.m., he made a 911 call, and he identified the voice on the recording as his own. The recording was played for the jury.

Ramos testified that, at around 9 p.m. on the evening of June 20, 2008, he was riding in

Rubio's car. They picked up Humberto Canchola, Juan Casillas, and Ramiro Aguilar. Rubio was driving, Ramos was in the front passenger seat, Casillas was in the driver's-side back seat, Aguilar was in the middle back seat, and Canchola was in the passenger's side back seat. Ramos testified that they stopped at the Volero gas station on Belvidere in Waukegan. After the gas station, they headed west on Belvidere, toward Gurnee. When they reached the corner of Belvidere and Lewis, they turned around and proceeded back to the ease. When they reached Victory, they made a left turn onto Victory heading north.

Ramos testified that, while they were driving north on Victory, Aguilar complained that he was "squished" between Casillas and Canchola. Rubio stopped the car to allow Ramos, who was smaller, to switch seats with Aguilar. Ramos testified that he opened his door and placed one foot on the ground when he heard four or five gunshots fired from behind the car. When he heard the shots, he got back into the car and closed his door. Ramos testified that he heard two shots, and then Canchola screamed. There was a pause and then he heard more gunshots. Ramos testified that he screamed at Rubio to drive off, but Rubio's head was against his window and Ramos observed that blood was running down Rubio's face. Ramos testified that he did not see who fired the gun at the car.

Ramos testified that Rubio did not place the car into park, but used the brake, when he stopped to allow the switch. After the gunshots, the car accelerated out of control heading north on Victory toward Glen Rock. Ramos testified that he grabbed the wheel and tried to bring the car under control as it careened along Victory. He managed to bring the car to a stop just before Glen Rock. After the car had been stopped, Ramos made his 911 call. Ramos testified that, when the car stopped, he, Aguilar, and Casillas got out of the car. Ramos testified that Casillas got into the front passenger seat and held Rubio. A short time later, an ambulance arrived.

Ramos testified that no one in the car had a weapon or made any threats. Ramos testified that, before the shooting, he had hung out with members of the Latin Kings street gang, but he denied that he was hanging out with members of the Latin Kings at the time of the shooting.

On cross-examination, Ramos denied that he flashed gang signs himself or that he had been with anyone flashing gang signs that night. Ramos was shown video from the Valero gas station taken on the night of the shooting. The video showed Ramos and others out of Rubio's car, waving their hands in the air, but Ramos denied that he or they were making gang signs. Ramos also denied that he and his friends had been asked to leave the gas station.

Ramos admitted that, in January 2008, he and Rubio, along with some others, had gotten "into it" with defendant. Ramos also admitted that, on the night of the shooting, Casillas was wearing a Sacremento Kings jersey, but he denied that it signified any gang affiliation. Ramos did not believe that Rubio was a member of the Latin Kings. Ramos also denied that he was a member of the Latin Kings.

Ramos was confronted with his statement to Detective Amaro, in which he said the occupants of the car saw defendant riding a bicycle. Ramos denied yelling at defendant as he and his friends left the gas station. Ramos also denied that the U-turn the car made on Belvidere was to follow defendant on his bicycle. Ramos testified that he did not remember telling Detective Amaro that the car never stopped. Ramos denied that he saw defendant at the scene of the shooting.

On redirect examination, Ramos testified that the incident in which he got into it with defendant occurred in the gym at Waukegan High School. Ramos testified that he was with three or four friends and defendant was with about eight people when the January 2008 incident at the high school occurred.

Juan Casillas testified through an interpreter. Casillas was in court pursuant to a subpoena and did not wish to be there or to testify. Casillas testified that, on the evening of June 20, he was in Rubio's mother's car with Rubio, Ramos, Canchola, and Aguilar. They went to the Volero gas station where everyone got out of the car. Ramos and Aguilar went into the store. They left the gas station heading west, pulled into a Walgreen Drugstore parking lot, turned around, and headed back to the east. Casillas testified that he did not see anyone on a bicycle at the intersection of Belvidere and Jackson. They decided to take Canchola home, so the made a left onto Victory. They stopped the car then to allow Ramos and Canchola to change seats.

Casillas testified that Rubio stopped the car but did not put it into park. Casillas looked back and saw a male in a white shirt pointing a gun at the car. Casillas testified that he ducked down until the shooting was over. Casillas identified defendant as the shooter. Casillas testified that defendant was sitting on a bicycle facing the car. Casillas testified that the first time he saw defendant that night was when the car had stopped on Victory.

Casillas testified that he observed Ramos and Canchola get out of the car. He heard more than four gunshots. He told Rubio to leave and observed that Rubio was bleeding from his head. Casillas testified that the car drove off very fast and stopped just before Glen Rock. Casillas got out of the back seat and got into the front seat where he then held Rubio. Casillas was shown a shirt with blood on it. Casillas identified the shirt as his.

Casillas testified that, at times before the shooting, he would hang out with members of the Latin Kings, but, at the time of the shooting, he was no longer hanging out with them. Casillas testified that no one in the car had a weapon and no one in the car threatened anybody on June 20.

On cross-examination, Casillas denied that he told Detective Garcia that, in 2007, he was an active Latin King gang member or that he rode with other members. Casillas denied that he told Detective Amaro that, on the night of the shooting, any occupant of the car said, "Look, there's [defendant]." Casillas maintained that Rubio turned onto Victory to allow Ramos and Canchola to switch seats. He was unsure whether the car was moving when the shots were fired. Casillas was also confronted with the video from the gas station. After viewing it, he identified himself in the video, but denied that he was making gang signs.

Ramiro Aguilar testified that, during the evening of June 20, 2008, he was with Rubio, Ramos, Casillas and Canchola. Around 9 p.m., they went to the Volero. Aguilar was seated in the middle of the back seat, Rubio was driving, Ramos was in the front passenger's seat, Casillas was in the back seat on the driver's side, and Canchola was in the back seat on the passenger's side. Aguilar testified that he knew defendant from Waukegan High School. Aguilar did not think that defendant was at the gas station. When they left the gas station, they were all seated in the same positions.

Aguilar testified that, when they left the gas station, they headed west on Belvidere, but they turned around and headed east after Canchola's mother called. Aguilar testified that he saw a guy in a white shirt on a bicycle in a parking lot before the car turned left onto Victory, where the car then stopped. Aguilar testified that the car stopped because he wanted to change seats with Ramos.

Aguilar testified that, after the car stopped, Ramos opened his door and Canchola was barely out of his seat when he heard five or six gunshots coming from somewhere behind the car. There was a pause between the first two shots and the rest. Aguilar testified that nobody else got out of the car. Canchola said he had been shot, and everybody told Rubio to leave. The car sped

off, and it stopped just before Glen Rock.

Aguilar testified that Rubio's head was leaning on his window. Aguilar held Rubio for a while and identified the blood-stained shirt that Rubio had been wearing. Aguilar denied that anybody in the car was armed or had made any threats.

On cross-examination, Aguilar maintained that the attack was unprovoked. He admitted that he told Detective Valko that the car had not headed west on Belvidere. Aguilar denied that he was a member of the Latin Kings. Aguilar denied that the others in the car were gang members, and he denied that anyone flashed gang signs. He denied that they had been asked or told to leave the gas station. Aguilar conceded that he knew defendant from school.

Humberto Canchola testified that, at around 9:30 p.m. on June 20, 2008, he got together with Ramos, Rubio, Casillas and Aguilar. He sat in the back seat behind Ramos, Rubio drove, Casillas was in the back seat behind Rubio, and Aguilar was in the middle of the back seat. They went to the Volero gas station so he and Aguilar could get cigarettes, and, when they left the gas station, everyone sat in the same place. They headed along Belvidere toward Gurnee. Canchola testified that he received a phone call from his mother asking him to come home, so Rubio turned the car around.

Canchola testified that they passed Volero on their way back and he saw defendant on a bicycle somewhere between Jackson and Victory. Canchola knew defendant from school. Canchola saw defendant leave the gas station and ride straight toward their car. Nobody in the car said anything to defendant. Canchola testified he saw defendant riding east when Rubio made the leaft turn onto Victory to let Canchola switch seats with Ramos.

Rubio stopped the car and, as Canchola put his foot out the door, he heard gunshots. There was a pause after the second gunshot. After the second shot, Canchola observed

defendant holding the gun. Canchola testified that Ramos had not exited the car. Rubio was struck in the head and Canchola was shot in the foot. Canchola testified that the car took off along Victory, and, eventually, Ramos was able to brake the car and put it into park. Ramos and Aguilar started calling 911. Canchola was taken to the hospital.

Canchola's clothing from that night was admitted into evidence. He identified blood on the clothing and a bullet hole in his shoe. Canchola denied that he was a member of the Latin Kings. Canchola also denied that anyone in the car that night had weapons or made any threats.

On cross-examination, Canchola admitted that his written statement did not say that they stopped the car because they were cramped for space in the back seat, but rather, the statement said they stopped because they "were going to fight." Canchola was asked if he remembered telling Detective Lopez that he saw defendant riding east on Belvidere with a grocery bag in his hand, or that he knew defendant because Rubio had problems with him at school. Canchola was asked if they were instructed to leave the gas station because they were having an altercation with Sureno 13 gang members. Canchola admitted that he told Detective Lopez that, immediately after leaving the Volero gas station, they headed east toward Victory, not west toward Gurnee.

Canchola was confronted with his written statement: "[Defendant] threw up gang signs and my friends threw them down *** and we were going to fight." In the statement, Canchola stated that he intended to fight defendant at the gas station. Canchola testified, however, that he did not remember telling Detective Lopez that gang signs were exchanged or that Rubio stopped the car so they could fight defendant.

On redirect examination, Canchola testified that he received pain medication before he spoke with the police. Canchola testified that, when he spoke with the police, he was dizzy, stressed, and confused.

Officer Brandon Langlais of the Waukegan police department testified that, on June 20, 2008, he was an evidence technician assigned to the major crime scene unit. Langlais took photographs of Rubio's vehicle at the scene of the shooting. On cross-examination, he stated that he observed no bullet holes in the exterior of Rubio's car, but he observed a bullet hole on the post between the front and back seat.

Officer Stephen Driscoll of the Waukegan police department testified that, on June 20, 2008, just before 10:30 p.m., he was on patrol. He responded to the Victory and Glen Rock location and observed a green Infinity. Driscoll took photographs of various areas of the car and holes in the car consistent with bullet entry. Driscoll searched the area but found nothing of evidentiary value. He was aware that a weapon was recovered in the area. On cross-examination, he testified that no broken glass was found in the car.

The parties stipulated to the substance of Darrell Wellman's testimony. Wellman was a friend of defendant. Wellman would have testified that, on June 20, 2008, approximately five minutes after the shooting, defendant left a gun on the porch of Wellman's home. Wellman moved the gun into his bedroom, and, 45 to 60 minutes later, gave the gun to Eduardo Diaz.

The parties entered into a second stipulation about the testimony of Diaz. Wellman asked Diaz to come to Wellman's house and take the gun defendant had left. Diaz agreed. Diaz placed the gun in a second-floor gutter of his girlfriend's house.

Sergeant Joseph Kreppein of the Waukegan police department testified that, on June 20, 2008, at around 10:30 p.m., he joined Detectives Heidler and Amaro in the area of Victory and

Glen Rock to assist them in their investigation of the shooting. Kreppein separated the occupants of Rubio's car and spoke to them to gather information. Kreppein also worked to control the crime scene. After defendant had been identified as the shooter, instructions to search for defendant were broadcast over the police department's radio. Kreppein went to defendant's house and overheard defendant's mother talking on the telephone. After hearing this, Kreppein was able to locate and arrest defendant at Kirk Park. Kreppein testified that defendant was cooperative.

Detective Montague Hall of the Waukegan police department is a member of a narcotics unit that targets gang members. Hall testified about his lengthy service concerning gangs in general and the Latin Kings specifically. Hall testified about his work with a gang suppression unit which identifies gang members and investigates gang-related crimes. Hall was qualified as an expert in gang culture.

Hall testified that defendant lived in a area that was predominately Maniac Latin Disciple territory. Hall also testified that defendant hangs out with Gangster Disciples and Maniac Latin Disciples. In Hall's opinion, it was not uncommon for someone to deny that he was affiliated with a gang. Hall testified that, on the night of the shooting and to his knowledge, Rubio and the others in the car were members of the Latin Kings, a rival gang of the Maniac Latin Disciple. Hall opined that the gang affiliations of defendant and the men in the car were a significant reason why the shooting occurred. According to Hall, the Latin Kings and the Maniac Latin Disciples constantly fight, and the fighting consists of fist fighting and shooting at each other.

On cross-examination, Hall testified that defendant was not documented as a Maniac Latin Disciple, but was believed to be an associate. Hall defined "associate" as someone who

spends time with known gang members. On redirect examination, Hall testified that there was no indication that anyone in the car had a weapon.

Detective Elias Agalianos, of the Waukegan police department, worked in the gang unit. Agalianos testified that he used a gunshot residue kit to collect a sample from defendant's hands and arms before defendant was interviewed. Agalianos testified that he and Detective Grzeda interviewed defendant following the shooting. Agalianos read *Miranda* warnings to defendant. According to Agalianos, defendant was calm during the interview and denied that he was involved in the shooting. Agalianos testified that his interview with defendant had not been recorded and lasted about 15 minutes.

Agalianos testified that, after the initial interrogation, Sergeant Zupec informed him that Rubio had died. According to policy, any further interviews with defendant had to be videotaped. Agalianos and Detective Cappelluti conducted the subsequent interviews with defendant. Agalianos testified that he and Cappelluti were aware that defendant had been identified as the shooter. Toward the end of the interview defendant informed the detectives that the gun used in the shooting was given to Eduardo Diaz. Defendant was taken along with the detectives to recover the weapon, which was eventually located at 331 Beasley. When the gun was found, all of the ammunition in the gun had been expended. Defendant confirmed that the gun found by police at 331 Beasley was the weapon he used in the shooting.

On cross-examination, Agalianos testified that defendant, in his statements to police, stated that he drew the gun only after the car containing Rubio and the others had stopped the car, jumped out of the car, and started to come after him. Agalianos also agreed that defendant stated that he shot at the car for his own safety.

The parties stipulated about the results of the gunshot residue testing performed on defendant and others. The parties agreed that the testified showed that Rubio had not discharged a firearm and Lee had discharged a firearm with his right hand. The parties further stipulated to the fact that the bullets removed from Rubio's head and chest were fired from defendant's gun.

Officer Brian Falotico of the Waukegan police department testified that, on the night of the shooting, he went to the hospital where Rubio was taken and visited the crime scene in order to collect evidence from Rubio and Canchola. Falotico testified about items of clothing that showed bullet holes and bloodstains; these items were later admitted into evidence. Falotico collected the clothes defendant was wearing and noted that they did not contain bloodstains.

Detective Dominic Cappelluti of the Waukegan police department interviewed defendant early in the morning of June 21, 2008. Before conducting the interview, Cappelluti watched defendant's first, unrecorded interview, in which defendant denied involvement in the shooting. During that first interview, Cappelluti received information that defendant had been identified as the shooter and that the shooting was gang related. Cappelluti testified that the first interview ended because Rubio had died and any further interrogation had to be videotaped.

Cappelluti testified that, during the subsequent interview with defendant, he did most of the talking. Cappelluti explained that his interrogation technique was designed to get defendant comfortable enough to tell the truth. Cappelluti testified that the fact that defendant and Rubio were in opposing gangs influenced his approach to the interview. A recording of the interview was played for the jury, and a transcript of the interview was also placed into evidence.

During the interview, Cappelluti told defendant that he believed defendant was acting in self-defense and that he was on defendant's side. Defendant told Cappelluti that he drew the gun for his own safety and only after the car stopped and its occupants had jumped out. Defendant

told Cappelluti he would not have fired the gun without a reason and explained that he fired it when the car's occupants started to come after him. Defendant told Cappelluti that the occupants of the car shouted "King Love" as the car stopped. Defendant also stated that he was sorry for what had happened, but that he had no control over the events.

During the interview, defendant told Cappelluti that, when defendant was at the gas station, the occupants of the car stuck their heads out of the car windows and shouted at him. Defendant knew that the occupants of the car were Latin Kings due to previous trouble with Rubio at school which caused him to be expelled.

Defendant stated during the interview that he saw the car doors open. Defendant believed that only a few Latin Kings rode "five deep" without weapons. Defendant did not want the car's occupants to jump out and shoot him. He knew that they were going to come out with something and defendant just wanted to escape. Defendant related that he shot only to create an avenue of escape and that he had no intention of killing anyone. Defendant stated that, after he fired his gun, he ran away because he thought that the car's occupants would kill him.

Defendant told Cappelluti during the interview that he was carrying a gun to provide him with safety. Defendant stated that it was a crazy neighborhood full of gang bangers. Defendant found the gun on the street; the gun was a Smith & Wesson .38-caliber revolver.

After the video finished playing, Cappelluti admitted that he told defendant if everything went right during the interview, defendant might walk out of the station. Cappelluti testified that he told defendant this because he wanted to locate the gun. Cappelluti testified that his goals for the interview with defendant were to establish a rapport with defendant, get defendant to give a voluntary confession as to his actions, and to retrieve the gun used in the shooting. Cappelluti

testified that the content and phrasing of the questions he used were designed specifically to achieve his goals for the interview.

On cross-examination, Cappelluti testified that it was about 250 to 300 feet from the Volero gas station to the spot of the shooting. The surrounding neighborhood was a "hot" gang area and Cappelluti did not want to enter the area unarmed. Cappelluti conceded that, if he were to pull over a car load of Latin Kings by himself, he would call for backup. Similarly, any time he stopped a Latin King gang member, he would conduct a protective pat down to make sure the gang member was not armed.

The parties stipulated to the chain of custody concerning Rubio's body and the evidence taken from it.

Manuel Montez, a forensic pathologist, conducted Rubio's autopsy. Montez described Rubio's wounds and determined that each gunshot was individually fatal: the shot to the head sufficiently damaged the brain so as to cause death, and the shot to the back of the chest damaged major blood vessels leading to sufficient bleeding to cause death. Montez opined that the cause of Rubio's death was multiple gunshots.

Following the foregoing testimony and stipulations, the State rested. Defendant moved for a directed verdict, but the trial court denied the motion.

Defendant presented his case. First, the parties stipulated that Casillas had admitted to being a Latin King gang member and rode around with other gang members beginning in April 2007. Defendant called Casillas to testify and Casillas could not remember that, on the night of the shooting, he told Ramos that defendant lived in the area of South Park and Water streets.

Detective Rigaberto Amaro of the Waukegan police department testified that he interviewed Casillas, typed out his statement and had Casillas sign it. On cross-examination, Amaro noted that Casillas was "out of it" during the interview.

Detective Francisco Lopez of the Waukegan police department testified that, on June 20, 2008, he interviewed Canchola. Lopez testified that, during the interview, Canchola discussed an incident occurring at the Volero gas station before the shooting. Canchola told Lopez that he and the occupants of the car had a confrontation with members of the Sureno 13 gang. This confrontation prompted the attendants at the gas station to ask Canchola and his group to leave the gas station. Canchola told Lopez that he did not see defendant at the gas station. Canchola told Lopez that defendant was riding a red bicycle, and he was wearing a white T-shirt and holding a grocery bag. Canchola further related that defendant was headed in the same direction as their car, and that defendant made a gang sign of disrespect. Canchola told Lopez that everyone in the car, except for Canchola, threw a return sign of disrespect. Canchola told Lopez that Rubio stopped the car so they could get out and fight with defendant.

Shanna Smith, defendant's cousin, testified that, in November 2007, she personally observed five or six Hispanic running and taking swings at defendant. She observed that, before a teacher broke up the fight, Rubio was in the group fighting with defendant.

Laquisha Lee, defendant's sister, testified that, between January and June 2008, she saw Hispanics in a green Toyota or Infinity regularly driving past her mother's house, making gang signs. She identified Rubio's car as the one involved, and she identified Rubio as the driver of the car. She testified that Rubio would make gang signs and would shout, "G.D. killer," or "I'm going to beat that nigger ass." Defendant was always present when this happened. On cross-

examination, she testified that defendant told her he was tired of running and wanted to get out of there.

Al Rogers, director of safety and security for the Waukegan public school district, testified that, at the end of November 1997, he witnessed a fight between defendant and seven or eight Latino students. Defendant was trying to retreat when Rogers intervened in the fight.

Defendant testified on his own behalf. During May and June 2008, defendant lived at South Park and Water Streets. Defendant attended Waukegan High School, where he played football and wrestled. On June 20, 2008, he was hanging out with some friends at Darrell Wellman's house. Defendant testified that he went to the Volero gas station to by cigarillos to use in making blunts, so he could smoke marijuana. Defendant rode there on his bicycle. Defendant also armed himself with a gun.

Defendant testified that, as he was leaving the gas station, he saw a car make a left turn onto Jackson and several individuals yelled out the window at him. Defendant recognized Ramos and Rubio from school and also identified Casillas as being in the car. He also recognized them to be the same people who drove by his house yelling gang slogans and flashing gang signs. When the car passed, defendant rode off on his bicycle, but saw the car make a three-point turn and begin heading in the same direction that defendant was traveling. Defendant testified that they yelled out the window again. Defendant wanted to escape.

Defendant testified that the car turned in front of him and he heard squealing tires. The car stopped about 15 to 20 feet in front of him. Defendant testified that he had difficulty stopping because the brakes on his bicycle did not work properly. If he had not been able to stop, defendant would have run his bicycle into the car. By the time defendant stopped, two

large guys were getting out of the car. Defendant knew that Rubio and Ramos were in the front seats of the car, but he did not know the two coming at him.

Defendant testified that, when Rubio and Ramos would drive past his house, making gang signs and yelling threats, it would frighten defendant. Defendant testified that, after the November 2007 fight, the car would drive by often, and by April or May 2008, the car was driving by every other day. Defendant testified that the occupants of the car would threaten him with a beating. Defendant also testified that, seven or eight times before, he had been chased from a park near his home by Rubio and other Latin Kings.

About a month or two before the shooting, defendant decided that he should get a gun because people were coming to his house and threatening him. Defendant testified that there were a lot of shootings in his neighborhood. For about a month before the shooting, defendant carried the gun with him when he left the house. Defendant explained that he never pulled out his gun during any of the drive-by incidents because no one ever got out of the car.

Defendant testified that, when the two guys got out of the car and ran at him, he drew his gun and shot four times, low and wide, so he could get away. Defendant had no path to get away with the two coming toward him. After he shot his gun, defendant went to Darrell's house and placed the gun in a box. He left Darrell's house and called his mother, telling her he was at the movies.

Defendant testified that he was picked up by the Waukegan police. Defendant admitted that he told Agalianos that he was not involved but maintained that he told Cappelluti the truth.

On cross-examination, defendant testified that he played fullback and linebacker in football, and he wrestled in the middleweight classification. Defendant stated that, in June 2008,

he was five feet seven inches tall and weighed 190 pounds. Defendant testified that he found the gun he used on the street. Defendant bought bullets from someone he knew.

Defendant asserted that he was removed from Waukegan High School and placed in a different school because of Rubio. Defendant admitted that he associated with Latin Maniac Disciples, but he denied that they were a rival gang to the Latin Kings. Defendant maintained that Latin Kings had chased him from a park located a few blocks from his house. Defendant admitted that he told his sister that he was tired of running and that he "couldn't wait to get out of here."

Still on cross-examination, defendant testified that he first saw Rubio's car at the Volero gas station. Defendant said that the car was going toward Washington on Jackson, but it turned around and came back toward him. Defendant first heard the screeching of the tires when the car was on Belvidere and Victory. Defendant stated that the intersection was a dark one and he was scared of the people in the car.

Defendant denied that he made gang signs at the people in the car. The gun was in his right shorts pocket. Defendant admitted that he did not see anyone in the car with a weapon, but noted that the occupants reached under their shirts. Defendant was sitting on his bicycle when he shot at the two guys who got out of the car. Defendant said that, on previous occasions, Rubio got out of the car to chase him. Defendant maintained that he could see no path of escape.

Defendant was questioned on cross-examination about lying to Agalianos. Defendant also admitted that he took Cappelluti to a place where he knew the gun was not actually being stored. Defendant told his interviewers that the gun was at Darrell's house. Defendant also denied that he fired the gun more than four times, even though, when the gun was recovered, it contained six expended rounds in the gun.

On redirect examination, defendant testified that he had not planned to kill anyone and that he carried the gun only to protect himself.

A video recording of the surveillance tape from the Volero gas station was stipulated to and admitted into evidence. The defense rested.

At the jury instruction conference, defendant's instructions regarding second degree murder and self-defense were allowed over the State's objection. The trial court rejected defendant's instruction on involuntary manslaughter.

The jury deliberated and found defendant guilty of second degree murder. Defendant was thereafter sentenced to a term of imprisonment of 15 years. Defendant timely appeals.

On appeal, defendant contends that the trial court erred in refusing to instruct the jury on involuntary manslaughter and in excluding evidence about Rubio's violent and aggressive character and his propensity for violence. Defendant also contends that the State failed to prove beyond a reasonable doubt that defendant did not act in self-defense. We consider each contention in turn.

Defendant argues that he was entitled to an involuntary manslaughter instruction. Involuntary manslaughter is defined as follows:

> "A person who unintentionally kills an individual without lawful justification commits involuntary manslaughter if his acts whether lawful or unlawful which case the death are such as are likely to cause death or great bodily harm to some individual, and he performs them recklessly." 720 ILCS 5/9—3 (West 2008).

The mental state of recklessness is defined as follows:

> "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 exercise in the situation." 720 ILCS 5/4—6 (West 2008).

The giving of a jury instruction is a matter within the sound discretion of the trial court. *People v. Jones*, 219 Ill. 2d 1, 31 (2006). An involuntary manslaughter instruction should be given if there is some credible evidence in the record that would reduce the severity of the crime of first-degree murder to involuntary manslaughter. *People v. Sipp*, 378 Ill. App. 3d 157, 163 (2008). However, a manslaughter instruction should not be given where the evidence shows that the crime was a murder and not a manslaughter. *Sipp*, 378 Ill. App. 3d at 163. With these principles in mind, we consider the record before us.

Defendant argues first that pointing a loaded handgun at another person constitutes recklessness. Defendant also contends that firing a handgun at another in an attempt to frighten that person is also a reckless action. In support, defendant cites to *People v. Whiters*, 146 Ill. 2d 437, 441-42 (1992), and *People v. Hines*, 31 Ill. App. 3d 295, 302 (1975). In *Whiters*, the defendant and the victim had lived together off and on for about nine months. Following the victim's arrest for battery in connection with an altercation with another girlfriend, the defendant and the victim began arguing as the defendant prepared to go out on a date with another man. The defendant testified that the victim pushed her, forced her to have nonconsenual sex (even though the defendant's statement to the police contradicted this testimony), ripped a phone out of the wall, and threatened to "kick her ass." The defendant grabbed a kitchen knife and pointed it at the victim. As the victim moved toward the defendant, she stabbed him in the abdomen. She immediately screamed she did not mean it and called an ambulance. *Whiters*, 146 Ill. 2d at 440.

The defendant's request for an involuntary manslaughter instruction was refused and the defendant was convicted of voluntary manslaughter. *Whiters*, 146 Ill. 2d at 440.

The appellate court concluded that the record contained evidence of acts by the defendant, which, if believed by the jury, could have been reasonably determined to be reckless conduct. *Whiters*, 146 Ill. 2d at 441. The supreme court agreed, focusing on the violence and confusion of the altercation along with the defendant's immediate reaction upon stabbing the victim of screaming that she did not mean to hurt him and calling for help. *Whiters*, 146 Ill. 2d at 441.

In *Hines*, the defendant and victim engaged in a fight during which the victim choked the defendant and struck him in the stomach and the head. The defendant broke loose from the victim and ran out of his apartment into the hallway. The victim then ran past him, and the defendant ran back into his apartment, got a handgun from his wife, then ran after the victim. The defendant confronted the victim, who threw his hands up and then began running away, whereupon the defendant shot at the victim. *Hines*, 31 Ill. App. 3d at 297. The defendant testified at trial that he shot at the victim to scare him. *Hines*, 31 Ill. App. 3d at 301. The defendant's request for an involuntary manslaughter instruction was refused (*Hines*, 31 Ill. App. 3d at 301), and he was convicted of voluntary manslaughter (*Hines*, 31 Ill. App. 3d at 296). On appeal, the appellate court held that the jury could have believed the defendant's testimony that he did not intend to shoot the victim, but only to scare him by firing the handgun. *Hines*, 31 Ill. App. 3d at 302. The court further held:

> "It has been held that pointing a loaded pistol at another is such a gross deviation from the standard of care which a reasonable person would exercise that it constitutes

> recklessness. (Citation.) Surely, then, the firing of a pistol at an individual in an attempt to 'scare' him is also recklessness." *Hines*, 31 Ill. App. 3d at 302.

The court also determined that the defendant's testimony showed he was guilty of at least involuntary manslaughter and reduced the degree of the offense of which the defendant was convicted to involuntary manslaughter and adjusted his sentence. *Hines*, 31 Ill. App. 3d at 302.

Defendant here points to *Hines* and urges this court to follow that case and to reduce the degree of the offense of which he was convicted from second-degree murder to involuntary manslaughter. We find *Hines* to be problematic. The court did not explain its analytical leap from finding the pointing of a loaded weapon at another to be reckless conduct to finding that pointing and shooting a loaded weapon at another still to be reckless conduct. The only explanation given for the reasoning appears to be the word, "surely," and this reasoning is insufficient.

Instead, we turn to *Sipp*, 378 Ill. App. 3d 157, for guidance. In *Sipp*, the defendant heard through another person that the victim had noticed the defendant's daughter riding her bicycle in the neighborhood and said, "something bad might happen to her." The defendant believed that the victim's statement was a credible threat against his daughter because the victim had dated the defendant's sister and had beaten the sister severely enough for her to require hospitalization. *Sipp*, 378 Ill. App. 3d at 159-60. The defendant took his daughter to Tennessee and returned to Chicago. Several days after the threat, the defendant, who customarily kept a firearm in his car, was driving when he spotted the victim along with some others near a local liquor store. Upon seeing the victim, the defendant formulated a plan to " 'send some warning shots to let them know that [the defendant] was willing to protect [his] family.' " *Sipp*, 378 Ill. App. 3d at 160. The defendant fired four shots in the general direction of the victim and the others in the group.

One woman was shot in the arm, and the victim was shot fatally in the back. The defendant testified at trial that he did not aim at anyone and tried to shoot his gun off to the right of the group. Defendant also testified that he did not even raise his arm to fire the gun, but fired it from the side of his body. *Sipp*, 378 Ill. App. 3d at 160-61. The trial court denied the defendant's requests to instruct the jury on involuntary manslaughter and second-degree murder, and the defendant was convicted of first-degree murder. *Sipp*, 378 Ill. App. 3d at 162.

In analyzing the differences between involuntary manslaughter and first-degree murder, the appellate court noted that the mental state of the offense differentiated the two crimes: recklessness for involuntary manslaughter and knowledge for first-degree murder. *Sipp*, 378 Ill. App. 3d at 163. Turning to the crime of involuntary manslaughter, the court stated that:

> " 'Certain factors may suggest whether a defendant acted recklessly and whether an involuntary manslaughter instruction is appropriate: disparity in size and strength between the defendant and the victim, the severity of the victim's injuries, whether the defendant used his bare fists or a weapon, whether there were multiple wounds, or whether the victim was defenseless.' " *Sipp*, 378 Ill. App. 3d at 164, quoting *People v. Eason*, 326 Ill. App. 3d 197, 209 (2001).

The court further considered that:

> " 'Illinois courts have consistently held that when the defendant intends to fire a gun, points it in the general direction of his or her intended victim, and shoots, such conduct is not merely reckless and does not warrant an involuntary-manslaughter instruction, regardless of the defendant's assertion that he or she did not intend to kill anyone.' " *Sipp*, 378 Ill. App. 3d at 164, quoting *People v. Jackson*, 372 Ill. App. 3d 605, 613-14 (2007).

The court also noted that " '[a] defendant's "testimony that he did not intend to kill anyone does not provide a sufficient basis for instructing on involuntary manslaughter." ' " *Sipp*, 378 Ill. App. 3d at 164, quoting *Jackson*, 372 Ill. App. 3d at 614. The court cautioned that it was not holding that a defendant's testimony is never worthy of belief, or that a jury could disregard the defendant's testimony for the reason that the defendant is the defendant in the case; rather, the defendant is not entitled to reduce the degree of the homicide due to a hidden mental state known only to him and unsupported by the facts. *Sipp*, 378 Ill. App. 3d at 164.

With this background established, the court turned to the facts of the case. It noted that the defendant essentially went hunting for the victim. Once the defendant located the victim, he fired four shots from his handgun in the general direction of the victim and the others the victim was with, striking one woman and the victim. The evidence showed that the victim was not brandishing a weapon, and the victim was not even aware of the defendant's presence before he was shot. Further, after the shooting, the defendant sold the handgun and abandoned the car he had used to locate the victim. Based on this, the court held that the trial court did not abuse its discretion in refusing to give the involuntary manslaughter instruction. *Sipp*, 378 Ill. App. 3d at 164-65. The court dismissed the defendant's argument that he was only trying to scare the victim, noting that the evidence that two of the four shots struck human targets undercut that contention. *Sipp*, 378 Ill. App. 3d at 165. Likewise, the court determined that the fact that two of the four shots struck human targets disposed of the defendant's contention that the path of the bullet through the victim corroborated the defendant's testimony. The court also noted that the coroner's testimony was consistent with other evidence in the record to explain the bullet's path through the victim. *Sipp*, 378 Ill. App. 3d at 165.

We find *Sipp* to be sufficiently factually similar to the instant case so that it is dispositive. Moreover, we note that the cases holding that, when a defendant wilfully points a gun in the direction of others and fires that gun, his conduct cannot be deemed reckless, and an involuntary manslaughter charge is not warranted, are legion. *E.g.*, *People v. Cannon*, 49 Ill. 2d 162, 166 (1971) (the defendant's act of voluntarily and wilfully firing it in the general direction of the decedents does not provide a sufficient basis to support an involuntary manslaughter instruction); *Jackson*, 372 Ill. App. 3d 613-14 (evidence showing that the defendant intentionally fired his weapon several times in the general direction of the victim and struck the victim several times did not require an involuntary manslaughter instruction); *People v. Eason*, 326 Ill. App. 3d 197, 210 (2001) (the defendant shot his gun at a group; the court held that the conduct was not reckless and an involuntary manslaughter instruction was not required); *People v. Jefferson*, 260 Ill. App. 3d 895, 912-13 (1994) (the defendant was not entitled to an involuntary manslaughter instruction when he deliberately pointed and fired his gun at a group of people on a residential street resulting in the death of a 13-year-old girl); *People v. Maldonado*, 240 Ill. App. 3d 470, 481-82 (1993) (where the evidence shows that the defendant intended to fire a gun, pointed it, and shot it in the victim's direction, an involuntary manslaughter instruction is not warranted; the defendant fired several shots at a car with the first shot inducing it to begin to drive away, and the subsequent shots, one of which fatally wounded the victim, were shot into an occupied and moving vehicle); *People v. Tiller*, 61 Ill. App. 3d 785, 794 (1978) (the defendant shot repeatedly at police officers, fatally wounding Officer Farmer; the court held that the involuntary manslaughter instruction was properly refused because the evidence showed that the defendant intended to fire the gun and pointed it and shot it in the direction of the victim). This sampling of cases, in which the defendant has requested an involuntary manslaughter instruction, but the

evidence showed that he intended to shoot his weapon and, in fact, pointed it and shot it in the direction of others, clearly demonstrates that an involuntary manslaughter instruction is not available in those circumstances. Thus, aside from the factual similarity of *Sipp*, and the dissimilarity of *Whiters* and *Hines*, Illinois law amply supports the rule that pointing a gun, with intent to fire, in the direction of others and shooting it is not reckless conduct and does not support an involuntary manslaughter instruction.

With this background established, we turn to the facts of this case. As in the *Sipp* line of cases, defendant here testified that he drew his gun and pointed it in the direction of the car containing the five Latin Kings. As in the *Sipp* line of cases, defendant testified that he fired four shots. The evidence here shows that defendant actually fired six shots and that three of the bullets found human targets. We also note that, despite defendant's testimony that he was trying to shoot low and wide of the car, three of the six shots hit people in the car, undercutting the force of defendant's exculpatory testimony. As in the *Sipp* line of cases, defendant disposed of his gun immediately after the shooting. Additionally, defendant denied any involvement in the shooting when first confronted by police questioning. Based on the law set forth in *Sipp* and other cases, and its factual similarity to this case, we hold that the trial court did not abuse its discretion in refusing to give to the jury an instruction on involuntary manslaughter.

We find *Hines* to be distinguishable. Although the factual scenario in *Hines* resembles the facts of this case, we cannot accept its guidance because of the paucity of understandable legal analysis. Not only does the guiding principle in *Hines*, that pointing a gun at another is reckless, contradict the court's analysis in *Sipp*, but it does so without any significant analysis. Further, the leap from pointing to shooting is wholly without explanation or citation to pertinent authority. By contrast, *Sipp* traces its explication of the law to several quoted sources, including

its guiding principle, that pointing and shooting a gun at an intended victim is more than reckless conduct. Based on the unsatisfying reasoning in *Hines*, we choose not to follow that case and instead choose to follow *Sipp*, which is replete with analysis and citations to other, similar authority.

We also determine that *Whiters* is distinguishable. In that case, the defendant was armed with a knife which she grabbed in the middle of a violent altercation with the victim. She testified that the she held the knife and the victim ran onto it, after which she immediately screamed that she did not mean to hurt the victim and she also immediately called for an ambulance. These facts, if believed, tend to undercut the argument that the defendant intentionally or knowingly stabbed the victim, because she worked to help the victim immediately. Likewise, the violence of the altercation coupled with the apparently opportunistic taking up of the knife also suggest that the defendant was not trying to kill the victim. In contrast, here, defendant deliberately armed himself with a loaded handgun for a period of months before the shooting. He also pointed the gun at the car and shot at the car. Three of the apparent six shots struck human targets, belying defendant's testimony that he was not shooting at the people in the car, but was only shooting to try and frighten them. Accordingly, based on these significant differences, we distinguish *Whiters*.

Defendant also relies on *People v. Williams*, 293 Ill. App. 3d 276 (1997), to support his contention that discharging a pistol in the direction of another is a reckless act. We find that *Williams*, however, is distinguishable. In *Williams*, the defendant was convicted of unlawful use of a weapon by a felon, aggravated discharge of a firearm, and involuntary manslaughter. The convictions stemmed from an incident in which the victim fired a shot at the defendant, and the defendant turned and fired six shots, with one striking and killing the victim. The defendant

testified that he had his eyes closed and was firing into the air above the victim's head, because he wanted to protect himself and make the victim run away. *Williams*, 293 Ill. App. 3d at 278.

On appeal, the first issue concerned whether the jury verdicts finding him guilty of involuntary manslaughter and aggravated discharge of a firearm were legally inconsistent because the jury was required to find that the defendant's mental state was both reckless and knowing at the same time. *Williams*, 293 Ill. App. 3d at 278. The next issue on appeal concerned whether the trial court erred in refusing to give a jury instruction on the potentially lesser-included offense of reckless conduct. *Williams*, 293 Ill. App. 3d at 280. The court determined that reckless conduct was a lesser-included offense of aggravated discharge of a firearm and further determined that there was some evidence to warrant giving the instruction. *Williams*, 293 Ill. App. 3d at 281-82.

From these issues, defendant appears to rely on the court's statement, "[t]he act of discharging a pistol in the direction of an individual is a reckless act that would, if nothing else, endanger the safety of an individual." *Williams*, 293 Ill. App. 3d at 281. We note, however, that the court's statement was made in the context of determining whether reckless conduct was a lesser included offense of aggravated discharge of a firearm, and not in the context of determining whether there was evidence to reduce the severity of the offense from first- or second-degree murder to involuntary manslaughter. We conclude that defendant has wrenched the foregoing passage out of its context and the context of the quoted passage is so dissimilar to the circumstances of this case that it renders *Williams* factually distinguishable.

Defendant also relies on the following passage from *Williams*:

"Whether the defendant's firing the gun in the air, over the heads of the men with his eyes closed, constitutes firing the gun in the direction of another person is a factual

> question to be resolved by the finder of fact. We therefore conclude that there was some evidence in the record here from which it could have been inferred that the defendant was guilty of reckless conduct and that the jury should have been instructed as to that offense." *Williams*, 293 Ill. App. 3d at 282.

Again, this quoted passage arose in the context of determining whether a jury instruction on the lesser-included offense of reckless conduct should have been given. We note that here, the evidence established that defendant intentionally fired his pistol in the direction of the Latin Kings in the car. *Sipp* more closely resembles this case than *Williams*. Accordingly, we determine that *Williams* is factually distinguishable and offers little guidance here.

Defendant also cites to *People v. Santiago*, 108 Ill. App. 3d 787, 803 (1982), for the proposition that involuntary manslaughter is not necessarily inconsistent with a claim of self-defense. While this may be true, it does not address the significant issue of whether intentionally firing a handgun at another person can constitute reckless conduct. *Sipp* holds that, repeatedly, Illinois courts have determined that it may not. *Santiago*, therefore, does not offer relevant insight into the issue before us. Likewise, defendant's citation to a case cited in *Santiago*, namely, *People v. Williams*, 15 Ill. App. 3d 303, 308 (1973) (*Williams 1973*), is unavailing because that case addressed only whether self-defense was necessarily inconsistent with involuntary manslaughter. As noted, the issue here is whether intentionally discharging a firearm at a person is a reckless act, and *Williams 1973* does not address that issue. Accordingly, we follow *Sipp* in holding that, when a defendant intentionally discharges a gun at his intended victim, the conduct is not reckless and does not warrant an involuntary-manslaughter instruction notwithstanding the defendant's assertion that he or she did not intend to harm anyone. Defendant's argument and authority to the contrary is either poorly reasoned or distinguishable.

Next on appeal, defendant argues that the trial court abused its discretion in excluding some evidence of Rubio's violent character and propensity for violence. In particular, defendant points to his motion *in limine* and five proffers therein to demonstrate the trial court's error:

> "(A) Chad Presswood would have testified he was shot by a Latin King in the summer of 2007, and subsequently told [defendant] this and showed him the exit and entry wound the bullet made in his body;
>
> (B) [Defendant] would have testified he was afraid to turn his back and run because of what Presswood told him, helping [the] jury understand why he did not turn his back and retreat but rather fired his weapon instead;
>
> (C) Al Rogers, supervisor of security at Waukegan High School, and Wendy Barnes, dean of students at Waukegan High School, would have testified they saw a video of an incident at the school from around January, 2008[,] where at least five Hispanic students, including Rubio, surrounded [defendant] and tried to beat him;
>
> (D) Al Rogers would have testified [that] it was his suggestion [defendant] be transferred to another school for his own safety;
>
> (E) Evidence would detail a May, 2007[,] incident proving Casillas to be an active member of the Latin Kings whose modus operandi was to viciously attack solitary members of other street gangs."

According to defendant, the trial court's exclusion of the evidence tendered in the foregoing proffers improperly limited defendant's ability to present a true picture of his state of mind about the danger that Rubio and the other occupants of the car posed to him. Defendant concludes that the trial court abused its discretion in excluding the evidence. We disagree.

Evidence of a victim's violent and aggressive character is admissible to support a

defendant's self-defense theory under two circumstances: (1) where the defendant's knowledge of the victim's propensity for violence may have affected the defendant's perception of and reaction to the victim's behavior, or (2) where the evidence of the victim's propensity for violence supports the defendant's testimony that the victim was the aggressor. *People v. Johnson*, 172 Ill. App. 3d 371, 377 (1988). Under the circumstances of this case, defendant was seeking to admit evidence of the victim's violent character under the first circumstance, to demonstrate the effect that his knowledge of the Rubio's violent tendencies had on his reaction when Rubio's car stopped in front of him. We note further that, generally, relevant evidence, meaning evidence that has any tendency to make the existence of any fact of consequence in the action more probable or less probable than it would be without the evidence, is admissible. *People v. Abernathy*, 402 Ill. App. 3d 736, 749 (2010). Whether to allow or refuse the evidence is left to the sound discretion of the trial court. *Abernathy*, 402 Ill. App. 3d at 749.

Turning first to the proffers regarding Presswood, we note that the key to the trial court's ruling was that, during the hearing on the motion *in limine*, defense counsel stated that the shooting of Presswood was remote in time and did not involve any of the individuals, including Rubio, associated with this case. In addition, the defense conceded that Presswood was unable to actually identify whoever shot him, either by giving the individual's name, or by giving the individual's gang affiliation. In other words, defendant informed the trial court that Presswood only heard from another person that a Latin King gang member was involved in his shooting; Presswood was unable, through his own personal knowledge, to testify that he had been shot by a Latin King. Based on this record, we cannot say that the trial court abused its discretion in declining to allow defendant to raise the evidence contained in the first two proffers of Presswood's testimony. On the other hand, we note that Presswood was allowed to testify to

things about which he had personal knowledge, like repeated incidents in which a carload of Latin King gang members would yell gang slogans and racial slurs at defendant (and Presswood). Likewise, Presswood could have testified that he observed Latin King gang members getting out of their cars and placing their hands in their hoodies, as if they were carrying a weapon. Despite these allowances, defendant did not call Presswood at trial.

Related to the Presswood testimony, defendant complains that he was precluded from testifying that he was afraid to turn his back on Rubio and the others, because he was afraid that he would be shot in the back just as Presswood had been. We note that this precise proffer was not actually offered in defendant's motion *in limine*, but was instead argument offered to explain the importance of Presswood's testimony and the trial court's error. We discern no abuse of discretion in refusing this.

Defendant next complains about the Al Rogers-Wendy Barnes proffered testimony concerning the video they watched of a beating or fight between defendant and Rubio and others. When the trial court learned that Rogers and Barnes would be testifying about seeing a video recording rather than from witnessing the altercation first hand, it barred the testimony. Defendant argues that this constitutes error and an abuse of discretion, because it conflicts with the trial court's ruling that other "similar" testimony about the occupants of the car was relevant, while the Rogers and Barnes second-hand testimony about the video was irrelevant. We disagree. We note that Barnes was allowed to testify about an incident in which he actually separated defendant from Rubio during an altercation. Additionally, a witness is generally limited to testifying about those things about which he or she has personal knowledge. *People v. Novak*, 163 Ill. 2d 93, (1994), abrogated on other grounds, *People v. Kolton*, 219 Ill. 2d 353 (2006). Defendant offers neither argument nor supporting authority to explain why the trial

court's ruling forbidding Rogers and Barnes from testifying about a video they once saw was erroneous. See 210 Ill. 2d R. 341(h)(7) (contentions not supported with argument or authority are forfeited). We note that the trial court stated that it would have allowed the video to be shown, but the defense acknowledged that the video had been lost or destroyed. We cannot conclude that the trial court's ruling constituted an abuse of discretion.

Defendant next contends that he was precluded from presenting evidence that it was Rogers' own idea to have defendant transferred to another school for defendant's safety. Defendant testified that he believed that it was the fighting with Rubio that caused him to be transferred. We do not see that Rogers' testimony, that it was his idea to transfer defendant to another school, is relevant to defendant's state of mind (as he already blamed Rubio for his transfer) or that it adds any noncumulative information to the copious evidence that Rubio and other Latin Kings were threatening and harassing defendant. Accordingly, we do not believe that the trial court abused its discretion in precluding this testimony.

Defendant's final issue regarding precluded evidence has to do with impeachment for Casillas. Defendant complains that he was precluded from raising a May 2007 incident that demonstrated Casillas was an active member of the Latin Kings and that he had a propensity to attack rival gang members when they were alone. Our review of the record does not accord with defendant's contention. We can find no mention in defendant's motions *in limine* regarding any specific incident involving Casillas. We note, however, that the trial court ordered the State to disclose information to defendant about a juvenile matter in which Casillas was involved. The court further ordered that defendant would be able to use the juvenile matter to impeach Casillas if he should deny being a member of the Latin Kings during his testimony. Accordingly, we can find no error associated with this particular proffer and reject defendant's contention.

Summing up, then, we hold that the trial court did not abuse its discretion in ruling on defendant's motions *in limine*. We note that much of the evidence defendant sought to admit in the motion was allowed. Additionally, the trial court allowed other sources to provide similar evidence. For instance, Presswood was allowed to testify about incidents that he witnessed, in which carloads of Latin Kings would shout gang slogans and racial slurs at defendant; likewise, defendant's sister was allowed to testify to the drive-by harassment as well. Rogers was allowed to testify about an incident in which he was personally involved, namely, a fight between defendant, Rubio, and others in which Rogers pulled defendant out of the fight. Accordingly we find no abuse of discretion regarding the trial court's evidentiary rulings on the issues raised in defendant's motions *in limine*.

In his final issue on appeal, defendant contends that the State failed to prove beyond a reasonable doubt that defendant did not act in self-defense. Self-defense is an affirmative defense, and when a defendant raises it, the State must prove beyond a reasonable doubt that the defendant did not act in self-defense, along with proving all of the elements of the charged offense. *People v. Lee*, 213 Ill. 2d 218, 224 (2004).

> "The elements of self-defense are: (1) that unlawful force was threatened against a person; (2) that the person threatened was not the aggressor; (3) that the danger of harm was imminent; (4) that the use of force was necessary; (5) that the person threatened actually and subjectively believed a danger existed that required the use of the force applied; and (6) the beliefs of the person threatened were objectively reasonable." *Lee*, 213 Ill. 2d at 225.

If the State is able to negate any one of these elements, then the defendant's claim of self-defense must fail. *Lee*, 213 Ill. 2d at 225.

The challenge to the State's ability to disprove self-defense beyond a reasonable doubt is a challenge to the sufficiency of the evidence. When a defendant makes such a challenge, the relevant question is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found, beyond a reasonable doubt, that the defendant did not act in self-defense. *Lee*, 213 Ill. 2d at 225.

Defendant's challenge to the sufficiency of the State's evidence to disprove the claim of self-defense is focused on "the information available to [defendant] at the time of the shooting about his assailants in the context of what he [saw] occurring around him." After analyzing the shooting in terms solely drawn from defendant's own testimony and wholly ignoring the testimony of the State's witnesses, defendant next turns to his mental state, contending that Rubio and the others sought out defendant and confronted him and that defendant "fired [his] weapon to make his escape, not with the intention of killing." Defendant further asserts that the evidence demonstrated that he reasonably believed that Rubio and the occupants of that car were going to kill him. Defendant then discusses the evidence which he believes supports finding that he was focused on escape.

We have carefully considered defendant's arguments regarding self-defense along with the evidence of record. We believe that defendant's analysis is fundamentally flawed because defendant viewed the evidence, not in the light most favorable to the State (see *Lee*, 213 Ill. 2d at 225), but in a light favorable to defendant. This is not the appropriate standard with which to consider evidence in a sufficiency-of-the-evidence challenge. Instead, we view the evidence of record in the light most favorable to the State and, in undertaking this analysis, we come to a different conclusion.

Defendant admitted that he was associated with the Latin Maniac Disciples street gang for a time before the shooting occurred because he hung around with other members of the gang. Defendant claimed that the Latin Maniac Disciples street gang was not a rival with the Latin Kings street gang, but this testimony was contradicted by, among others, Hall, the gang expert witness. Defendant also admitted that he knew Rubio and Ramos because he had fought them at school and, according to his testimony, they participated in driving by his house yelling gang slogans, racial slurs, and threats. Defendant also testified that Rubio and others whom he believed to be members of the Latin Kings had repeatedly chased him out of a park near his home. Defendant testified that his home was about two blocks away from the park, and he was able to run home safely each of the seven or eight times he had been chased. Defendant also testified that he had never seen Rubio or any of the others who were chasing and harassing him with weapons. Despite this, defendant testified that he obtained a handgun and bullets, and he carried the gun with him practically everywhere he went before the shooting. Defendant also told his sister around the time he obtained the gun that he was tired of running from the Latin Kings.

Defendant testified that, on the night of the shooting, he rode his bicycle to the nearby Volero gas station. Defendant was, as was his custom at that time, armed with his handgun. As defendant left the gas station, a car drove by and defendant heard the people in the car yell gang slogans at him and flash gang signs. Defendant recognized Rubio and Ramos as two of the five occupants in the car. The car reversed its direction and the people in the car again yelled at defendant as they were heading in the same direction as defendant.

Defendant testified that he was scared of the occupants of the car. Despite this fear, defendant nevertheless left the relative safety of the gas station, which was well lit and populated

by a number of people, and rode his bicycle along a much darker and less populated street. Eventually, the car passed defendant and squealed to a stop.

Defendant testified that, when the car stopped, at least two people got out of the car and began running towards him. At this point, the two people were 15-20 feet away from him, and possibly further away. Defendant testified that he pulled out his gun and "started shooting at their direction." Defendant did not attempt to escape, as he had always successfully done before. Defendant testified that he fired four shots. (Defendant also testified that the gun, a six-shot revolver had been fully loaded when he armed himself with it to go to the gas station, and it was empty, with all of the rounds being expended, when it was recovered by the police.) Regardless of the number of shots defendant admitted to, Rubio and Canchola were struck by defendant's gunfire, notwithstanding that defendant purportedly fired low and wide in an effort to scare the occupants of the car. Defendant then fled the scene after shooting his gun.

When defendant was initially questioned by police after being picked up in the park, he did not tell them that he had been involved in a shooting, or that he shot because he was afraid that he was going to be attacked. Instead, he professed ignorance of the incident and denied that he had been involved. Defendant did not mention to police that he believed any of the occupants were armed. On cross-examination at trial, for the first time, in response to questioning whether he had told police or anyone that the occupants were armed, defendant responded, "I seen them reach under their shirt." The evidence in the record, however, demonstrates that defendant never told anyone that he had seen anyone in the car with a weapon of any kind. Additionally, in spite of the threats, confrontations, and altercations between Rubio and the others and defendant, defendant had never seen anyone, and specifically anyone in the car, with a weapon at any time.

On this record, we conclude that the State negated the claim of self-defense beyond a reasonable doubt. Defendant had never seen any of the participants armed with a weapon at any time during any of the incidents to which he testified, the drive-by harassment, the fights, or chases from the park. Additionally, defendant had always escaped from the confrontations, either because he was allowed to, or because he was able to outrun his pursuers. Defendant testified that the car had stopped and the occupants were exiting the car. Defendant, on his bicycle, would have been able to escape more quickly than the occupants could have run after him. Even if they had returned to the car and re-entered it, they would have had to turn it around and then again locate defendant. At the least, defendant could have headed for the relative safety of the well-lit and well-attended gas station, where he could have called for assistance. Based on this, we conclude that the State proved, beyond a reasonable doubt, that defendant's belief that force was required to respond to the situation was not objectively reasonable. Defendant appears to have had the ability to escape, especially after the occupants of the car began to chase him on foot.

We also note that the evidence showed that defendant told his sister that he was tired of running from the confrontations with the Latin Kings. Defendant attempts to portray the comment as an indication that he could not wait to get out of the neighborhood and leave those troubles behind. However, at around that time, defendant obtained a handgun, giving his statement a much more aggressive cast. Further, defendant testified that he would habitually arm himself with his handgun. Based on his statement that he was tired of running and the fact that he obtained a handgun which he carried with him practically everywhere, it is an eminently reasonable inference that defendant decided to change his role from the victim to the aggressor. In light of that mental state, inferred from the evidence, defendant's decision to leave the relative

safety of the gas station and ride into a much darker street going in the same direction as the carful of Latin Kings who had just challenged him appears to suggest that defendant decided to take advantage of any opportunity that might present itself. Based on this view, then, defendant's belief that he needed to use force to respond to the threat was not reasonable. Moreover, in this view, it is defendant who is continuing the confrontation and goading the others to leave the car, where he would be able to shoot them.

Further undermining defendant's view of the evidence is the fact that, despite his testimony that he shot low and wide in an effort to scare the occupants of the car, at least three of the shots struck people in the car. Granted, Canchola was struck in the foot, supporting the claim he was shooting low. Rubio, however, was struck twice, once in the head, and once in his upper back, which cannot be characterized as "low." Additionally, the fact that, despite his testimony that he was not trying to hit anyone, at least three shots of the six apparently fired actually struck human targets, thus undermining that testimony. See *Sipp*, 378 Ill. App. 3d at 165.

Accordingly, we hold that the evidence was sufficient beyond a reasonable doubt to negate one or more of the elements of self-defense, causing that claim to fail. As a result, we reject defendant's analysis and argument on appeal.

For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

Affirmed.