

NOTICE  
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 110262-U

Filed 9/18/12

NO. 4-11-0262

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
STEVEN HELLER,	)	No. 10CF282
Defendant-Appellant.	)	
	)	Honorable
	)	Charles G. Reynard,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.  
Presiding Justice Turner and Justice Knecht concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* (1) The trial court did not abuse its discretion in allowing evidence defendant attempted to persuade a witness to recant her statement to police.
- (2) The State presented sufficient evidence to convict defendant beyond a reasonable doubt of robbery.
- (3) The trial court did not abuse its discretion in sentencing defendant to 22 years' imprisonment.
- (4) Defendant's trial counsel did not provide ineffective assistance where defendant was unable to prove he was prejudiced by his counsel's performance.
- ¶ 2 In October 2010, a jury convicted defendant of robbery (720 ILCS 5/18-1(a) (West 2008)). In December 2010, the trial court sentenced him to 22 years' imprisonment.
- ¶ 3 Defendant appeals, arguing (1) the trial court erred in denying his motion *in limine*, (2) the evidence was insufficient to convict him of robbery, (3) the court abused its discretion by

sentencing him to 22 years in prison, and (4) his trial counsel provided ineffective assistance. We affirm.

¶ 4

## I. BACKGROUND

¶ 5 In April 2010, the State charged defendant with robbery for forcibly taking the purse of Annie DeJonghe, a person 60 years of age or older (720 ILCS 5/18-1(a) (West 2008)).

¶ 6 During defendant's October 2010 trial, DeJonghe, who was 69 years old when the incident took place, testified she was leaving a shopping mall in Bloomington, Illinois, on March 26, 2010. She was walking to her car while holding her keys, shopping bags, and purse in her right hand. As she reached her vehicle, defendant approached her and asked for directions to Peoria. When DeJonghe began to answer defendant, he grabbed her keys, purse, and shopping bag and "jerk[ed] it twice to get the whole thing." DeJonghe was holding on "very tightly," and defendant had to pull twice to get the items out of her hands. DeJonghe tried to hold on, but defendant pulled more forcefully the second time. DeJonghe identified defendant as the man who took her purse, keys, and shopping bag. DeJonghe testified she did not "willingly part" with those items. Defendant then ran and got into the passenger side of a red car, which then drove away. DeJonghe testified she experienced pain in her fingers and a part of her arm, which lasted for "a few days" as a result of defendant pulling the purse out of her hands.

¶ 7 Danielle Wade, defendant's then girlfriend, testified she and defendant went to the shopping mall on March 26, 2010, "looking for money." Wade testified she and defendant planned on stealing someone's purse. According to Wade, they wanted to steal a purse because purses are "easy to steal." Wade testified they saw DeJonghe and decided to steal her purse because DeJonghe "looked like she had money."

¶ 8 Wade testified DeJonghe's purse, keys, and shopping bag were on the seat of DeJonghe's car when defendant initially grabbed them. According to Wade's testimony, DeJonghe then "snatched it back. There was tugging, and then, finally, [defendant] just grabbed hard enough, and she let go." Defendant then returned to the vehicle, driven by Wade, and the two drove away. Wade testified defendant had taken DeJonghe's purse, keys, and shopping bag. Wade and defendant then stopped at a rest area and disposed of most of the items in DeJonghe's purse. They kept the cash, wallet, and the purse. A recording of a surveillance video showing Wade and defendant pulling into the rest area, exiting the vehicle, and disposing of the other items was played for the jury.

¶ 9 Wade also testified about a police overheard she participated in while in custody. Wade agreed to place a call to defendant, which was recorded and played for the jury. During their conversation, Wade told defendant, "I didn't think you were really going to steal it from her." Defendant replied,

"I wasn't fucking around. When I say I'm going to do something, I'm gonna fucking do it. I ain't the type of person gonna say, 'Well I'm gonna do this, I'm gonna do that. I'm gonna do that.' Not if we can do it. I will if I can do it, trust me. Regardless of the consequences. I'll think about the consequences when they come."

¶ 10 Defendant's mother, Deborah Heller, testified she spoke with defendant on April 30, 2010, while he was in jail. Their conversation was recorded and played for the jury. During the conversation, defendant stated, "I did take the purse, I'm not going to deny that, I'll be totally honest with [my attorney], but the point is, it's not no fuckin' robbery, at most it's a fuckn' theft."

Defendant also told Deborah "if I can get someone to contact [Wade] and tell her to recant her fuckn' statement, then they ain't got shit. The only thing they're going on is what she said."

Defendant then told Deborah she needed to talk to someone (it is unclear from the recording who) and tell him "he needs to contact [Wade] and let her know she needs to recant her statement" because "if she recants her statement[, ] they ain't got shit on neither of us."

¶ 11 At the jury conference, defendant agreed to an instruction allowing the jury the option of finding him (1) not guilty, (2) guilty of robbery, or (3) guilty of theft from the person. The jury was instructed that unlike robbery, theft from a person does not require the use of force.

¶ 12 On October 5, 2010, the jury found defendant guilty of robbery.

¶ 13 On October 7, 2010, defendant filed a motion for a new trial, which the trial court denied.

¶ 14 On December 29, 2010, the trial court sentenced defendant to 22 years' imprisonment.

¶ 15 This appeal followed.

## ¶ 16 II. ANALYSIS

¶ 17 On appeal, defendant argues (1) the trial court erred in denying his motion *in limine*, (2) the evidence was insufficient to convict him of robbery, (3) the court abused its discretion by sentencing him to 22 years' imprisonment, and (4) his appointed trial counsel provided ineffective assistance.

### ¶ 18 A. Motion *In Limine*

¶ 19 In September 2010, defendant filed a motion *in limine* to exclude, *inter alia*, defendant's other criminal acts. While defendant was in jail following his arrest in this case he

had a phone conversation with his mother, which was recorded. Defendant told his mother to get someone "to contact [Wade] and let her know she needs to recant her statement." As a result, he was charged with attempt (subornation of perjury). Thereafter, defendant requested evidence regarding that charge also be excluded.

¶ 20 Following an October 2010, hearing on defendant's motion, the trial court excluded the fact defendant was charged with attempt (subornation of perjury) because it was "unduly prejudicial." However, the court found the State could introduce the actual conversation because:

"It represents an arguable state of mind of the Defendant, a consciousness of guilt being expressed by the Defendant in seeking to alter the evidence, the testimonial evidence against him \*\*\*."

¶ 21 Defendant argues the trial court erred in allowing evidence defendant attempted to persuade a witness to change her testimony. We disagree.

¶ 22 Generally, evidence of other crimes is inadmissible to demonstrate a defendant's propensity to engage in criminal activity. *People v. Donoho*, 204 Ill. 2d 159, 170, 788 N.E.2d 707, 714 (2003). However, evidence regarding other crimes is generally admissible to prove motive, intent, identity, absence of mistake, *modus operandi*, or any other relevant fact other than propensity. *Donoho*, 204 Ill. 2d at 170, 788 N.E.2d at 714. "The admissibility of other-crimes evidence lies in the trial court's sound discretion, and we will not disturb that court's decision absent a clear abuse of discretion." *People v. Johnson*, 368 Ill. App. 3d 1146, 1155, 859 N.E.2d 290, 298 (2006). " 'An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by

the trial court.' " *People v. Sutherland*, 223 Ill. 2d 187, 272-73, 860 N.E.2d 178, 233 (2006) (quoting *People v. Hall*, 195 Ill. 2d 1, 20, 743 N.E.2d 126, 138 (2000)).

¶ 23 In this case, the statement was admitted to show that defendant was trying to get his mother to help him change a witness's statement to police regarding the robbery charge. This indicates consciousness of guilt. See *People v. Gambony*, 402 Ill. 74, 80, 83 N.E.2d 321, 325 (1948) (an attempt to suppress evidence or obstruct an investigation is relevant as evincing consciousness of guilt); see also *People v. Jones*, 82 Ill. App. 3d 386, 393, 402 N.E.2d 746, 750 (1980) (evidence of attempted intimidation of a witness shows consciousness of guilt and is thus relevant). Thus, the trial court did not err in determining the statement was relevant.

¶ 24 Further, we cannot say the statement was unduly prejudicial as the evidence against defendant was overwhelming. The State presented evidence in the form of defendant's own admissions he took the purse and other items from DeJonghe. In addition, Wade testified defendant pulled the items from DeJonghe's hands. DeJonghe, the victim, testified she was holding the items "very tightly" and defendant had to pull twice before he could pry them loose because the first time he did not pull hard enough. DeJonghe also testified she did not part with those items willingly. While defendant disputes the amount of force used was sufficient to qualify the act as robbery, DeJonghe testified she experienced pain in her fingers and a part of her arm for a few days after the incident.

¶ 25 Here, defendant's statement demonstrated his consciousness of guilt regarding the robbery charge. No danger of unfair prejudice existed in admitting that statement as the evidence against defendant was overwhelming. Thus, the trial court did not abuse its discretion in admitting defendant's statement.

¶ 26

## B. Sufficiency of the Evidence

¶ 27 Defendant argues the evidence was insufficient to prove him guilty of robbery beyond a reasonable doubt. Specifically, defendant contends the State failed to prove defendant used the requisite amount of force in taking DeJonghe's purse to make it a robbery. Defendant maintains at most his actions amounted to theft from the person. We disagree.

¶ 28 In reviewing a challenge to the sufficiency of the evidence, the relevant inquiry is whether, when 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. *People v. Brown*, 169 Ill. 2d 132, 152, 661 N.E.2d 287, 296 (1996). It is the responsibility of the trier of fact to determine the credibility of witnesses and the weight their testimony carries, to resolve conflicts in the evidence, and to draw reasonable inferences from that evidence. *People v. Ortiz*, 196 Ill. 2d 236, 259, 752 N.E.2d 410, 425 (2001). A court of review will not overturn the verdict of the fact finder "unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt." *People v. Milligan*, 327 Ill. App. 3d 264, 267, 764 N.E.2d 555, 558 (2002).

¶ 29 "A person commits robbery when he or she takes property \*\*\* from the person or presence of another by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-1(a) (West 2008). "The difference between theft from the person and robbery lies in the force or intimidation used by the perpetrator to accomplish his goal of taking property from a person." *People v. Taylor*, 129 Ill. 2d 80, 83, 541 N.E.2d 677, 679 (1989). "Sufficient force to constitute robbery may be found when the article taken is 'so attached to the person or clothes as to create resistance, however slight.'" *Taylor*, 129 Ill. 2d at 84, 541 N.E.2d at 679 (quoting

*People v. Campbell*, 234 Ill. 391, 393, 84 N.E. 1035, 1036 (1908)). "When the force used is to prevent the resistance of or to overpower the person robbed, [then] such force makes the offense robbery." *Hall v. People*, 171 Ill. 540, 543, 49 N.E. 495, 496 (1898).

¶ 30 In *People v. Patton*, 76 Ill. 2d 45, 389 N.E.2d 1174 (1979), the supreme court held the defendant did not commit robbery, but instead theft from the person, when he took the victim's purse. *Patton*, 76 Ill. 2d at 52, 389 N.E.2d at 1177. The victim testified she was carrying her purse by her fingertips when the defendant " 'swift[ly] grab[bed]' her purse, throwing her arm back 'a little bit.' " *Patton*, 76 Ill. 2d at 47, 389 N.E.2d at 1175. She said her purse was gone before she realized what had happened. There was no other evidence of the use of force, the threat of the use of force, any resistance by the victim, any injury to the victim, or a struggle between the defendant and the victim. *Patton*, 76 Ill. 2d at 48, 389 N.E.2d at 1175. The court held "the simple taking or 'snatching' of a purse from the fingertips of its unsuspecting possessor" did not involve sufficient force to constitute a robbery. *Patton*, 76 Ill. 2d at 48-49, 389 N.E.2d at 1175.

¶ 31 In *People v. Bowel*, 111 Ill. 2d 58, 64, 488 N.E.2d 995, 998 (1986), the supreme court reached the opposite conclusion because there "[t]he force involved was greater" than described in *Patton*. In *Bowel* the victim was carrying her purse in her left hand at the zipper with her arm at her side. The defendant approached the victim, walking in the opposite direction of her. When he reached her, the defendant "took her left hand with his left hand, and 'touched' her fingertips as he pulled the purse from her hand with his right hand, leaving her fingers 'a little red' but not bruised." *Bowel*, 111 Ill. 2d at 61, 488 N.E.2d at 997. The court held these facts constituted "more than a simple snatching." *Bowel*, 111 Ill. 2d at 64, 488 N.E.2d at 998. The

court affirmed the trial court's judgment convicting the defendant of robbery. *Bowel*, 111 Ill. 2d at 64, 488 N.E.2d at 998.

¶ 32 In this case, the State presented testimony defendant pulled the purse and other items from DeJonghe's hands with enough force she experienced pain in a part of her arm and fingers for a few days thereafter. Although Wade testified the purse and other items were initially on the car seat and not in DeJonghe's hands, both DeJonghe's and Wade's account involve defendant pulling the purse away from the victim and out of her hands. Thus, defendant used, at least, some force to accomplish the taking by overcoming DeJonghe's resistance. See *Patton*, 76 Ill. 2d at 49, 389 N.E.2d at 1175 (it may be robbery when there is a struggle or the property is so attached to the victim as to create resistance in the taking). Defendant's argument the State failed to provide sufficient evidence to prove him guilty of robbery beyond a reasonable doubt fails.

¶ 33 C. Defendant's Sentence

¶ 34 Defendant argues the trial court abused its discretion in imposing a 22-year sentence for his robbery conviction. We disagree.

¶ 35 The trial court has great deference when making sentencing decisions, and if a sentence falls within statutory guidelines, we will not disturb that sentence unless the court abused its discretion. *People v. Grace*, 365 Ill. App. 3d 508, 512, 849 N.E.2d 1090, 1093-94 (2006). An abuse of discretion may be found where the sentence is excessive and cannot be justified by any reasonable view of the record. *People v. Phippen*, 324 Ill. App. 3d 649, 651-52, 756 N.E.2d 474, 477 (2001). Absent an abuse of the court's discretion, we will not alter the sentence on review. *People v. Stacey*, 193 Ill. 2d 203, 209-10, 737 N.E.2d 626, 629 (2000).

¶ 36 We note the parties do not dispute that, based on defendant's prior criminal history, the trial court was required to sentence defendant as a Class X offender. 730 ILCS 5/5-4.5-95(b) (West 2008). The sentencing range for a Class X offense is not less than 6 years and not more than 30 years. 730 ILCS 5/5-4.5-25(a) (West 2008). The court fashioned a 22-year sentence, which is within the statutory range. A sentence within statutory limits is excessive only when it is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. See *People v. Luna*, 409 Ill. App. 3d 45, 52, 946 N.E.2d 1102, 1110 (2011).

¶ 37 Defendant argues his sentence is disproportionate to the nature of the offense because the amount of force used during the robbery "was minimal at best." Defendant points out he did not have a weapon and did not threaten or strike DeJonghe. Defendant also contends "the amount of pain to the victim [was] fairly minimal" and "certainly was not enough to warrant a 22-year sentence." However, the trial court is in a superior position during the trial and the hearing in aggravation and mitigation to make a sound determination as to the punishment than is a court of review. *People v. Barrios*, 114 Ill. 2d 265, 277, 500 N.E.2d 415, 420 (1986). A reviewing court must not substitute its judgment for that of the trial court simply because it would have weighed the factors differently. *People v. Fern*, 189 Ill. 2d 48, 53, 723 N.E.2d 207, 209 (1999).

¶ 38 In this case, the trial court considered the presentence investigation report (PSI), statutory factors in aggravation and mitigation, comments of counsel, and defendant's written comments. The court found statutory factors in aggravation including defendant's prior juvenile and adult criminal history. The court also found a significant sentence was necessary to deter

others from committing such crimes.

¶ 39 The PSI showed defendant's criminal record dated back to 1989 when he was adjudicated delinquent for aggravated assault. In 1992, defendant was again adjudicated delinquent for residential burglary. Since then, defendant has been convicted of burglary (1995), criminal trespass to land (1997), residential burglary (1997), residential burglary (2002), forgery (2004), and theft over \$300 (2006), as well as numerous traffic violations. The court noted defendant's criminal history was "perhaps the single-most significant factor in aggravation because it predicts the future better than anything else." Defendant's PSI also showed he had a probation revocation and mandatory-supervised-release violation as well as an escape from the Department of Corrections.

¶ 40 Defendant also argues the trial court did not adequately consider his rehabilitative potential. However, where mitigating evidence is presented to the trial court during the sentencing hearing, we may presume the trial court considered it, absent some indication, other than the sentence itself, to the contrary. *People v. Dominguez*, 255 Ill. App. 3d 995, 1004, 626 N.E.2d 775, 783 (1994). Moreover, the existence of mitigating factors does not require the court to reduce a sentence from the maximum allowed. *People v. Payne*, 294 Ill. App. 3d 254, 260, 689 N.E.2d 631, 635 (1998).

¶ 41 Here, the trial court found several applicable mitigating factors, including the potential hardship on his son and the fact defendant's conduct did not cause serious physical harm. The court also considered defendant's mental health issues as well as his addiction to drugs. According to the PSI, defendant (then 34 years old) admitted to "using crack cocaine every day, if he was able to obtain it, from age 16 to two days before his arrest" for robbery. The

PSI also indicated defendant was being treated for bi-polar disorder. However, the court also noted while defendant expressed remorse, "the distance between sorrow for being caught and sorrow on behalf of the victim [was] a wide distance [apart.]"

¶ 42 In sum, defendant was eligible for the statutory maximum extended term of 30 years in prison. After considering the aggravating and mitigating factors, the trial court fashioned a 22-year sentence, which is within the permissible statutory sentencing range. We conclude the court did not abuse its discretion by sentencing defendant to 22 years in prison.

¶ 43 D. Ineffective-Assistance Claim

¶ 44 Defendant argues his trial counsel provided ineffective assistance by failing to request a limiting instruction regarding evidence of his attempt to get Wade to change her statement. We disagree.

¶ 45 To establish ineffective assistance of trial counsel, a defendant must prove (1) the conduct of counsel fell below an objective standard of reasonableness, and (2) the deficient performance prejudiced the defendant such that a reasonable probability exists the result would have been different but for the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984). The *Strickland* Court noted when a case is more easily decided on the ground of lack of sufficient prejudice rather than whether counsel's representation was constitutionally deficient, the court should do so. *Strickland*, 466 U.S. at 697.

¶ 46 In this case, even if we were to find counsel's failure to request a limiting instruction rendered his performance deficient, defendant is still unable to show prejudice as the evidence against him was overwhelming. As previously stated, defendant admitted he took the purse from DeJonghe. Wade testified defendant pulled the purse and other items from

DeJonghe's hands. DeJonghe testified defendant snatched the purse and keys from her hands. DeJonghe testified she was holding the items "very tightly" and defendant had to pull twice before he could pry the items loose. Dejonghe testified the defendant's second attempt was more forceful. DeJonghe testified she felt pain in her fingers and in a part of her arm for a few days following the incident as a result of "the pull." Thus, even if a limiting instruction had been given no reasonable probability exists the jury would have found defendant not guilty as the evidence of defendant's guilt was overwhelming. Accordingly, defendant's ineffective-assistance claim fails.

¶ 47

### III. CONCLUSION

¶ 48 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 49 Affirmed.