

¶ 3

BACKGROUND

¶ 4 Jefferson's charges stem from the armed robbery of Michael Piwnicki and attempted armed robbery of Elodia Guillermo and Denah Zygaldo during the early morning hours of November 21, 2009. Following an initial mistrial, Jefferson was retried and convicted in 2011.

¶ 5

I. Trial Evidence

¶ 6 On retrial, the State presented the testimony of Ismael Gonzales, Michael Piwnicki, Elodia Guillermo, Denah Zygaldo, Detective Mikal El-Amin, and Detective Joseph Bruni.¹ The defense presented the testimony of Officer Roger Wilson. Jefferson did not testify. Collectively, the evidence established the following facts.

¶ 7 Jefferson, accompanied by a man and a woman, entered Eagle Liquor Store in Chicago Heights on November 20, 2009, shortly before midnight. The three individuals approached the sales counter where the store clerk, Ishmael Gonzalez, observed Jefferson wearing black jeans and a "black hooded sweatshirt" with the hood down, revealing his face. At the counter, the trio attempted to purchase a bottle of alcohol, but could not produce enough money to pay for the item. The woman in the group thus walked over to the entrance of the liquor store where "four or five men" were standing in the entryway and, like Jefferson, wearing "black hoodies." She asked if the men could cover the purchase of the alcohol. When she returned to the counter, however, the three still lacked sufficient funds, so Gonzalez returned the liquor to the shelf and the group proceeded to leave the store. As all of the individuals exited the store, Gonzalez overheard Jefferson say "someone was going to get robbed; it's going to be a stick-up."

¶ 8 Meanwhile, at approximately midnight that same evening, Michael Piwnicki was the lone customer at Enzo's Restaurant adjacent to Eagle Liquor Store. Two employees, Denah Zygaldo

¹ Defense counsel elicited on cross-examination that Piwnicki had a pending marijuana possession case and Zygaldo had a prior felony conviction for leaving the scene of an accident.

and Elodia Guillermo, were working in the restaurant at the time. Zygaldo attended the cash register while Guillermo went to the storage room to begin preparing Piwnicki's order. As Piwnicki waited for his meal, Jefferson entered the restaurant with the hood of his sweatshirt now covering the top of his head and a black bandanna across the lower part of his face. Jefferson approached Zygaldo at the cash register and demanded, "B***h, open the drawer and give me the money." He repeated this three times before eventually pulling a black revolver from his waistband and pointing it at Zygaldo's head, again demanding, "Do you think this is a game? Open the drawer and give me the money." Zygaldo repeated "okay," but began walking backwards toward the storage room with her hands up. At this moment Guillermo returned from the storage room where she had been retrieving food to witness Jefferson pointing a pistol at Zygaldo as she walked away. Zygaldo then backed into the storage room and used a metal stand to bar the door. Seconds later, Guillermo ran out the back door. Both Zygaldo and Guillermo called 911 from their cell phones.

¶ 9 At that point, Jefferson turned to Piwnicki and told him to get on his hands and knees. Piwnicki complied, placing his cell phone on the floor and handing over the cash in his hand that he was going to use to pay for his meal. Jefferson then demanded Piwnicki "empty out the rest of [his] pockets." Piwnicki again complied. Jefferson retrieved the items from Piwnicki's pockets and moved over to the sales counter where he attempted to open the cash register by "flipping [it] over" and "hitting on it." Unable to open the register, Jefferson left Enzo's.

¶ 10 Approximately five minutes later, Piwinicki went next door to Eagle Liquor Store. Piwnicki told Gonzalez he had just been robbed and requested any video recording of the outside of the store. Gonzalez informed Piwnicki the liquor store had no exterior cameras and the interior cameras were not operating at the time. Piwnicki left the store and walked back towards

Enzo's.

¶ 11 Chicago Heights police officers and detectives arrived at the scene shortly after midnight on November 21, 2009, and obtained descriptions from the various witnesses. Piwnicki described the offender to police as a bald, light-skinned black male. His description did not refer to the suspect's face as hairless with no eyebrows or eyelashes.² According to Piwnicki, he has "bad eyes" and opined that the robber's light skin made it difficult to see any facial hair. Gonzalez described the suspect as light skinned, 200 pounds, and approximately 6'1" or 6'2", adding that he was taller and fairer skinned than the other men in or near the store. Gonzalez also noted the offender was wearing a black jacket and black pants. His description did not include age, did not mention that defendant lacked any hair, and did not describe defendant's eyes as "bulging." Zygaldó's description referred to the suspect as a black male approximately 210 pounds and 6 feet tall with "yellowish" skin. He was wearing black pants, a black bandana, and a black hooded sweatshirt with the hood up. While she did not know the offender by name, she had seen him in Enzo's as a customer more than once before the robbery. Zygaldó's initial description provided at the scene did not refer to the suspect as having no eyebrows; however, her subsequent description given at the police station did make note of this fact. Guillermo, having fled into the alley after only a few seconds, could only describe the suspect as a black male wearing black clothing and a black bandana.

¶ 12 On November 30, 2009, several days later, Jefferson entered Enzo's as a customer. Guillermo was working the register. Instantly she recognized him as the man who had attempted

² On cross-examination, defense counsel questioned Piwnicki about his familiarity with "alopecia," a medical condition which Jefferson, in his briefs, claims to have. Alopecia is the medical term for hair loss, and can in some cases render the affected person completely hairless without eyelashes or eyebrows. See Attorney's Dictionary of Medicine A-247 to A-249 (Matthew Bender 2014).

to rob the store and subtly informed her boss of this fact without Jefferson noticing. Her boss then telephoned the police. Meanwhile, Jefferson approached the register and placed his order with Guillermo. As Jefferson ate his meal in the restaurant, Detectives Joseph Bruni and Alfredo Salinas arrived. Several uniformed police officers also entered the restaurant, with some of them ordering food. Guillermo identified Jefferson as the robber to the detectives. Moments later, Zygaldo arrived at Enzo's. Immediately upon Zygaldo witnessing Jefferson in the store, she recognized him as the robber without "any question whatsoever," and became "scared" and "hysterical." She repeatedly informed the detectives, "That's the guy." Both Zygaldo and Guillermo noted Jefferson had also frequented Enzo's as a returning customer. The officers then arrested Jefferson.

¶ 13 On December 2, 2009, Detective Bruni presented Gonzalez with a physical lineup of five people. Gonzalez "immediately" identified Jefferson as the man from the liquor store who said "someone was going to get robbed; it's going to be a stick-up." The police did not present such a lineup to Piwnicki, who first made his formal identification of Jefferson in court.

¶ 14 II. Sentencing

¶ 15 The jury found Jefferson guilty of armed robbery and attempted armed robbery on December 1, 2011, and the parties proceeded with sentencing. According to the pre-sentencing investigation report (PSI), Jefferson possessed four prior convictions. In 1996, Jefferson was found guilty in Michigan of possession of a firearm, sentenced to 120 days in jail and 3 years of probation. While serving his probation for the Michigan offense, Jefferson was arrested in Minnesota and subsequently convicted in 1999 of possession of a controlled substance with intent to deliver, and sentenced to another 2 years of probation. Jefferson violated this second period of probation in 2000. Before Jefferson could be sentenced on that probation violation in

Minnesota, he was again arrested in 2001 in Illinois for Class X possession of a controlled substance with intent to deliver. Then, while on bond for the Illinois charge, he was arrested in Minnesota for separate possession charges in Minnesota. Jefferson was ultimately convicted on both the Illinois and Minnesota charges and sentenced to six years in the Illinois Department of Corrections and 68 months of jail time, respectively.

¶ 16 The trial court heard victim impact statements from Piwnicki and Zygaldó and arguments from the State. The trial court also heard factors in mitigation from Jefferson's mother, father, sister, and daughter. Jefferson also made a statement on his own behalf. In its ruling, the trial court noted it considered both aggravating and mitigating factors. The trial court listed Jefferson's extensive criminal history, the violent and serious nature of the crime, the use of a weapon, the threats to the victims' lives, and Jefferson's failure to take responsibility for his actions as some of the aggravating factors. It also listed his attempts at improving his life, attending culinary school, and supporting his children as mitigating factors. Ultimately the trial court sentenced Jefferson to 35 years in the Illinois Department of Corrections, plus 3 years mandatory supervised release. After the trial court denied a motion to reconsider Jefferson's sentence, he filed this appeal.

¶ 17

ANALYSIS

¶ 18 Jefferson presents two arguments on appeal. First, he contends the evidence was insufficient to find him guilty beyond a reasonable doubt. Jefferson additionally argues the trial court abused its discretion when it sentenced him to 35 years of imprisonment for armed robbery.

¶ 19

I. Reasonable Doubt

¶ 20 When presented with a challenge to the sufficiency of the evidence, this court must determine whether, after taking 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*, 2013 IL 114196, ¶ 48. Because it is the role of the trier of fact to fairly resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences, we will not substitute our judgment for that of the trier of fact on issues involving the weight of evidence or witness credibility. *Id.* The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. Similarly, the trier of fact is not required to disregard inferences that flow normally from the evidence nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *Id.* A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Brown*, 2013 IL 114196, ¶ 48.

¶ 21 Jefferson primarily challenges the witness identifications in this case as “unreliable and unworthy of belief.” Generally, the trier of fact “decides the weight that an identification deserves.” *People v. Tomei*, 2013 IL App (1st) 112632, ¶ 59. Therefore if the jury finds the identification to be unreliable, it may weigh that evidence accordingly. *Id.* Nevertheless, Jefferson contends the jury in this case unreasonably relied on the four witness identifications in this case, citing five factors routinely used to evaluate the reliability of an identification. These factors are: (1) the witnesses’ opportunity to view the suspect; (2) the witnesses’ degree of attention; (3) the accuracy of any prior descriptions provided; (4) the witnesses’ level of certainty at the time of the identification procedure; and (5) the length of time between the crime and the identification. *Id.* ¶ 37 (citing *Piatkowski*, 225 Ill. 2d 551, 567 (2007)).

¶ 22 With regards to these factors, three witnesses observed Jefferson commit the crime. Each

witness immediately provided a description that matched Jefferson. Both Zygaldo and Guillermo subsequently identified Jefferson without hesitation only days later, while Piwnicki identified Jefferson in court with certainty. Although the crime took place in a matter of minutes and each witness admitted to only having viewed Jefferson's face partially covered, these facts are hardly fatal in this case. Several cases demonstrate that a mask does not necessarily invalidate a witness's opportunity to view an offender and Jefferson admits in his brief to having a unique appearance that would make him more easily identifiable. See, e.g., *People v. Bryant*, 94 Ill. 2d 514, 521 (1983). Further, both Zygaldo and Guillermo had prior contact with Jefferson as a customer and a member of the neighborhood, which allowed them to more easily recognize him. See *People v. McTush*, 81 Ill. 2d 513, 521 (1980) (noting that Illinois courts also must also consider the witness's acquaintance with the offender prior to the crime when assessing reliability of the identification). Finally, any doubts raised by the bandana's obstruction are all but extinguished by the testimony of Gonzalez, who observed Jefferson: moments before the crime was committed; in a liquor store next door Enzo's; without his face covered; wearing the exact clothing described by the other witnesses; and brazenly admitting that "someone was going to get robbed; it's going to be a stick-up."

¶ 23 Jefferson attempts to elevate the significance of the witnesses' failure to include in their prior identifications specific references to his alopecia, alleging that these omissions are so glaring as to raise doubt regarding the veracity of the identifications overall. Nevertheless, we note "[t]he credibility of an identification does not rest upon the type of facial description or other physical features which the complaining witness is able to relate." *People v. Witherspoon*, 33 Ill. App. 3d 12, 19 (1975). Instead, we place greater significance on the "overall impressions rather than on specific features." *People v. Dereadt*, 2013 IL App (2d) 120323, ¶ 28. And in this

case, all four of the witnesses provided “overall impressions” that were remarkably consistent and otherwise a precise match for Jefferson’s appearance.

¶ 24 Jefferson further refers to Zygaldo’s prior felony conviction and Piwnicki’s pending possession charge as motives for them to “curry favor with the State.” Yet Jefferson offers us no reason why we should discount the jury’s credibility determination in this regard, merely contending the two “may have fudged or hyped the facts to get a conviction.” The jury was made well aware of the witnesses’ criminal history and chose to believe their testimony regardless; the record offers us no reason to find that decision unreasonable. See *People v. Collins*, 106 Ill. 2d 237, 262 (1985).

¶ 25 In addition to attacking the reliability of the identifications, Jefferson generally contends it is incredible he would return to Enzo’s as a customer if he had in fact attempted to rob the restaurant. Likewise, he asserts that opting not to flee after several officers arrived at Enzo’s “is not the behavior of a guilty man,” and to argue otherwise “taxes the gullibility of the credulous.” *People v. Coulson*, 13 Ill. 2d 290, 296-97 (1958). We disagree. “Although consciousness of guilt can be inferred from flight, the converse *** is not a necessary corollary.” *People v. Zarate*, 264 Ill. App. 3d 667, 675-76 (1994). Jefferson wore a bandana during the robbery and quite possibly believed he would remain anonymous upon returning to Enzo’s. Moreover, he may very well have had no reason to suspect the officers intended to arrest him. Given Enzo’s proximity to a police station and the fact that several of the officers ordered food, it would be fair to conclude the purpose of the officers’ visit was to eat and not to make an arrest. Finally, even if Jefferson did become aware of the events transpiring around him, we do not find it improbable he believed his best course of action was to feign ignorance. Indeed, to have attempted flight from a small area surrounded by law enforcement would have been futile and would have likely

only further suggested his identity as the robber. See *id.* at 676 (“Defendant would not be the first criminal, nor will he be the last, to conduct himself as though he were unaware of what happened, confident in the belief that he could thereby escape suspicion.”).

¶ 26 In short, the jury had ample opportunity at trial to consider all of the potential reasons to discredit the identifications used to convict Jefferson. The jury likewise had opportunity to consider what, if any, Jefferson’s lack of flight revealed about his guilt or innocence. As the record gives us no compelling reason to find the jury’s decisions regarding these issues unreasonable, we accordingly find the evidence sufficient to support Jefferson’s conviction for armed robbery.

¶ 27 II. Sentencing

¶ 28 Jefferson also contends that the 35 year prison sentence he received was "excessive." Armed robbery is a Class X felony typically punishable by 6 to 30 years of imprisonment. See 720 ILCS 5/18-2(b) (West 2010); 730 ILCS 5/5-4.5-25(a) (West 2010). The offense, however, carries an additional 15 year sentencing enhancement if committed while armed with a firearm. 720 ILCS 5/18-2(b) (West 2010). Further, under Illinois law, the trial court may impose an extended-term sentence when the defendant was convicted of a separate felony of the same or greater class within 10 years of the instant conviction, excluding time spent in custody. 730 ILCS 5/5-5-3.2(b)(1) (West 2010). The extendible range of sentencing for armed robbery is 30 to 60 years. 730 ILCS 5/5-4.5-25(a) (West 2010). Given that Jefferson committed the robbery with a firearm and owns a prior conviction for a Class X felony committed in 2001, he qualified for both the firearm enhancement and an extended-term sentence. The sentencing range was accordingly 21 to 75 years.

¶ 29 We review a sentence within statutory limits under an abuse of discretion standard and

may therefore only alter a sentence when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Snyder*, 2011 IL 111382,

¶ 36. So long as the trial court does not consider incompetent evidence or improper aggravating factors, or ignore pertinent mitigating factors, it has wide latitude in sentencing a defendant to any term within the applicable range. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 56.

¶ 30 Jefferson does not allege the trial court considered improper evidence of factors. Instead, Jefferson alleges the trial court failed to give the factors in mitigation and aggravation their proper weight and "hammered" him with a sentence 14 years above the minimum. Yet, even assuming we agree with Jefferson that the trial court should have placed greater weight on his family life and lack of gang involvement, we cannot " 'substitute [our] judgment for that of the trial court merely because [we] would have weighed these factors differently.' " *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010) (quoting *People v. Stacey*, 193 Ill. 2d 203, 209 (2000)). Moreover, to the extent Jefferson's sentence is 14 years over the minimum, we note he still received well below the maximum of 75 years. In light of the violent nature of the crime and Jefferson's extensive criminal history and violations of probation, we find Jefferson's characterization of his sentence as "excessive" to be overstated. We thus affirm Jefferson's 35 year sentence in the Illinois Department of Corrections.

¶ 31

CONCLUSION

¶ 32 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 33 Affirmed.