2016 IL App (2d) 150793-U
No. 2-15-0793
Order filed December 21, 2016

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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 Winnebago County.
	)	
Plaintiff-Appellee,	)	
v.	)	Nos. 11-CF-2584
	)	11-CF-2593
	)	11-CF-2598
	)	
DEVANTE HILL,	)	Honorable
	)	Ronald J. White,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE SCHOSTOK delivered the judgment of the court.
Presiding Justice Hudson and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held*: Because a motion to suppress the defendant's statement would not have been successful, defense counsel was not ineffective in failing to pursue such a motion. Although the weapon recovered was inoperable, the evidence was sufficient to convict the defendant of armed robbery with a firearm.

¶ 2 On November 6, 2014, the defendant was convicted of three counts of armed robbery (720 ILCS 5/18-2(a)(2) (West 2010) and one count of attempted armed robbery (720 ILCS 5/18-2(a)(2) (West 2010); 720 ILCS 5/8-4 (West 2010)). The defendant was sentenced to 42 years' imprisonment. On appeal, the defendant argues that he received ineffective assistance of counsel in that defense counsel failed to pursue a motion to suppress his post-arrest statement to the

police. The defendant also argues that because the weapon recovered was inoperable, the evidence was insufficient to support his convictions for armed robbery with a firearm. We affirm.

¶ 3 BACKGROUND

¶ 4 On September 28, 2011, the defendant was indicted on three counts of armed robbery with a firearm (720 ILCS 5/18-2(a)(2) (West 2010)) (the armed robbery statute), one count of attempted armed robbery (720 ILCS 5/18-2(a)(2) (West 2010); 720 ILCS 5/8-4 (West 2010)); two counts of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1 (West 2010)); and one count of resisting a peace officer (720 ILCS 5/31-1(a) (West 2010)). The charges stemmed from a series of robberies that occurred in Rockford on September 15, 2011. Prior to trial, the charges for unlawful possession of a weapon by a felon were severed by agreement of the parties.

¶ 5 On May 3, 2013, the appointed public defender filed a motion to suppress the defendant's statement given to the police following his arrest. In the motion, the defendant alleged that after his arrest, he was repeatedly struck about the head and body by the arresting police officer and then interviewed within two hours of the beating. The defendant further alleged that he did not knowingly and understandingly waive his rights, and that his statement to the police was involuntary because it was procured via mental coercion.

¶ 6 In January 2014, private counsel filed an appearance on behalf of the defendant. In June 2014, the trial court granted the defendant's request to withdraw his motion to suppress his statement. Defense counsel stated in open court that he had reviewed the case with the defendant and made a strategic decision to withdraw the motion to suppress. Defense counsel stated that one of the reasons for the withdrawal was that the defendant intended to testify at trial. At a later hearing on other motions, defense counsel again explained that he made a strategic decision to

withdraw the motion to suppress because he believed the motion would be unsuccessful and because he anticipated the defendant testifying at trial.

¶ 7 A jury trial commenced on October 29, 2014. Melissa Lamb testified that on September 15, 2011, she was a cashier at a Dollar Tree store in Rockford. At around 8:30 p.m., three men with guns ran into the store. One approached her, placed a black handgun to her head and threatened to "blow her brains out" if she did not open her register. She and another employee, Terry Herrera, opened their registers and the men took all the money. One of the men had stayed by the door. The men were wearing masks so she could only see their eyes and foreheads. They were all African American males. After the men left the store, she called 911 and reported the robbery. She told the dispatcher that three black men had robbed the store, there were two guns involved, and one of the males was wearing a white or gray hoodie. She believed all three men were about 5'7". To an officer that responded to the scene, Lamb described her assailant as 5'7", 150 pounds, with a gray hooded sweatshirt, a dark mask, and dark gloves.

¶ 8 Herrera corroborated Lamb's testimony. Herrera said one of the men had also pointed a silver handgun at her head as well. The suspect who held the silver gun to her head was wearing a white t-shirt, dark hoodie, denim jeans, something wrapped around his face, and dark gloves. She believed that the suspect who remained at the door was shorter than the other two suspects. She believed that the man who held the gun to her head was about 6'0" tall, 160 pounds. She believed that the man who threatened Lamb was about the same size.

¶ 9 Two employees of a nearby Walmart store, on Riverside Street, testified that they were outside on break when they saw the three men run from the Dollar Tree store. They testified that the men were black and had t-shirts pulled over their faces.

¶ 10 Kalo Benjamin testified that at the time of trial he was incarcerated, serving a 21-year sentence for armed robbery with a firearm related to the robberies at issue in this case. He did

not agree to testify in exchange for his 21-year plea deal and no promises or threats were made in exchange for his testimony. On September 15, 2011, he drove a Chevy Malibu to the Walmart on Riverside with Jemel Johnson, Tommy Rosser, and the defendant. He parked at an apartment building behind the Walmart while the other three went into the Dollar Tree. The defendant was carrying a silver revolver. Johnson also had a gun. The three were gone for about 10 to 15 minutes. When they returned, he drove them to Anna's Pizza, and parked around the corner. The three exited the vehicle and went to Anna's. From where he was parked he could not see Anna's but he heard a lady screaming from the direction of Anna's. At that point, he left and went to another friend's house.

¶ 11 Anna Chiarelli testified that she owned Anna's Pizza. On September 15, 2011, a little before 9 p.m., she was sitting behind the front counter when she saw three masked men approaching on her surveillance cameras. She believed they intended to rob her so she called 911. They entered the vestibule but were unable to enter the restaurant because the inner door was locked. She turned her surveillance video over to the police.

¶ 12 Todd Kundert testified that he was a delivery driver for Anna's. At around 8:50 p.m., he returned from a delivery and parked right in front of Anna's. As he pulled in, he saw three men with masks on their faces and he believed they intended to rob Anna's. When the inner door to Anna's would not open, one of the men came toward Kundert's car and pointed a "black something" at him, which Kundert assumed was a gun. Kundert placed his car in reverse and drove away. The suspect, who was wearing dark overalls and a light-colored garment over his face, told him to stop. From the parts of their skin that were exposed, Kundert testified that all three suspects were black. As he was driving away, Kundert saw the men begin to flee so he turned around and began following them. He called 911 and told the dispatcher that the suspects were running and that they were removing their clothing. Kundert testified that the suspects

eventually split up, with two running toward Hecker and Custer Streets and another one running east toward the cemetery. Kundert also saw a dark colored vehicle in a parking lot across the street leaving the scene with its headlights off, blowing several stop signs on the way.

¶ 13 Kathryn Pomerene testified that she was entering a pub and grill, Mulligan's, on September 15, 2011, at about 9 p.m. Her father was with her and she planned to meet her fiancé there. As they were about halfway toward the door of Mulligan's someone ran up beside her, put a shiny silver gun to her head, and stole her purse. There were three assailants, but she only saw one of them. The one she saw was about 18 years old, black, and about 5'10". All three were wearing hoodies: black, red, and a light gray or cream colored. All had their faces covered.

¶ 14 Kevin Gulley testified that he was a Rockford police officer. On September 15, 2011, he was called to the scene of an armed robbery at Anna's Pizza. He was in an unmarked vehicle, wearing plainclothes and a police vest. On the way to Anna's he came upon three black males that he believed were suspects for the armed robbery. Two of the suspects were wearing sleeveless t-shirts and the third was wearing a white t-shirt. Officer Gulley exited his vehicle and pointed his weapon at the three. Rosser stopped, but the other two ran.

¶ 15 Gregory Yalden testified that he was a Rockford police officer. On September 15, 2011, he was in an unmarked squad car patrolling the west side of Rockford. His partner, Officer Don Dulgar, was driving. Yalden was wearing a tactical vest and a baseball hat that said "Rockford Police" on it. They heard a dispatch regarding three suspects that had fled the scene of an armed robbery at Anna's Pizza. They drove that direction. They parked and turned off their lights at the southwest corner of Latham and Yonge streets. While sitting there, they saw a black male walking southbound on Yonge. They exited the car and approached the man, who looked back at him. Yalden yelled "Stop, Police" but the man began to run. The officers chased the man and continued identifying themselves as police and telling him to stop. The man ran from Yonge

Street to Latham Street, then eastbound through an alley, across North Main Street, and into Greenwood Cemetery. Yalden entered the cemetery and began to look for the man. He found a man trying to conceal himself in a large bush. Another officer, Officer Jury, who had responded to Yalden's call for back-up, was also present. They both pointed their weapons at the man in the bush and told him to show his hands. When the man did not do so, Yalden grabbed him by the left arm and tried to drag him out of the bush. The man resisted and Yalden overpowered him and forced him face first into the ground. Yalden said he had no choice as the man was not taking directions and he did not know if the man was armed. Yalden arrested the man about 8:58 p.m. Yalden identified in court the man he arrested as the defendant.

¶ 16 On cross-examination, Yalden testified that he used his knee to strike the defendant several times in the defendant's side. When the defendant refused to put his hands behind his back, Yalden used his knee to strike the defendant in his right cheek area. When the defendant continued to refuse to put his arms behind his back, Yalden used his elbow to strike the defendant twice in the right side of the defendant's back. Yalden had to kneel on the defendant's back and rip the defendant's arms out from under the defendant's body to handcuff him. Yalden did not see any abrasions on the defendant's face, the defendant did not complain of any injuries, and the defendant did not request medical attention. On redirect examination, Yalden explained that he had struck the defendant because the defendant was not listening to his verbal commands and he was worried that the defendant was armed. He did not know the defendant was unarmed until after the defendant was arrested and he searched the area. On rebuttal, Yalden acknowledged that he had a flashlight with him. It was dark and he needed it to see. He denied ever hitting the defendant with the flashlight. He also did not observe any injuries or abrasions of any kind on the defendant.

¶ 17 Sergeant Joseph Stevens testified that he found Johnson hiding in some bushes at 1819 Latham Street and arrested him. Johnson was wearing a white t-shirt, black pants, and black shoes. Detective Maurice Pruitt testified that he arrested Benjamin without incident in front of Benjamin's house. The record indicates that surveillance video was reviewed from Walmart, Anna's, and Mulligan's. Sergeant David Lee testified that the clothing Rosser had on when arrested, including a yellow bracelet, was similar to clothing worn by one of the assailants as seen on the video surveillance footage. Detective David Patterson testified that the clothing Johnson had on when arrested was similar to the clothing worn by one of the assailants on the video surveillance footage.

¶ 18 Sergeant Kurt Whisenhand testified that on September 16, 2011, he went to the area of 1925 Latham to search an area in which there had been a foot chase the previous night. In the alley between the 1900 blocks of Latham and Freemont streets, he found a white t-shirt and a rusty silver revolver in a bush. Detective Brian Shimaitis, an expert in firearms, testified that the recovered gun was inoperable because it was missing its hammer, and thus could not expel a projectile. He further testified that a civilian might not notice the missing hammer and that some revolvers do not have a visible hammer. In his opinion, the gun with the missing hammer was still a firearm. He did not know when the hammer was removed.

¶ 19 Christina Davison testified that she was a forensic scientist specializing in firearms identification at the Rockford Forensic Science Laboratory. She defined a firearm as "an assembly of parts designed to fire projectile using the products of combustion." She examined the recovered gun and determined that it was inoperable because it was missing its hammer and firing pin. In her opinion, the gun was still a firearm because it was designed to propel projectiles using the products of combustion.

¶ 20 Scott Olson testified that he was a detective with the Rockford police department and had photographed the defendant after his arrest. Olson did not recall the defendant displaying any scars or abrasions at the time he was photographed. If there were any injuries, it was normal procedure to take photos of the injuries. In this case, there were no visible injuries. The record indicates that the photographs were submitted into evidence. The photographs do not show any significant abrasions, contusions, or swelling on the defendant's face, arms, or legs.

¶ 21 Detective David Swanson testified that he interviewed the defendant at the Public Safety Building on the evening of September 15, 2011. Another detective was also in the interview room. The interview started just before 11 p.m. He first asked the defendant if he needed any food, water, or to use the bathroom. The defendant already had water and declined anything further. Upon preliminary questioning, the defendant told Swanson that he was a high school graduate and could understand English. The defendant denied being under the influence of drugs or alcohol and Swanson did not observe any signs of intoxication or impairment. Swanson did not notice any physical injuries and the defendant did not complain about any sort of pain. Swanson testified that the subject of the defendant's father, who was a former Rockford police officer, may or may not have been brought up. If it was brought up, Swanson could not remember by whom. Swanson testified that if he had raised the subject of the defendant's father, it was probably only as a means to build camaraderie with the defendant. Swanson presented the defendant with a standard waiver of rights form, which the defendant initialed and signed.

¶ 22 Swanson further testified that the defendant initially denied involvement in the robberies but, after about a half hour of questioning, the defendant admitted to his involvement in the Dollar Tree robbery, the Anna's Pizza attempted robbery, and the Mulligan's robbery. The defendant made his admissions orally and in writing. The defendant's initial denials were not included in the written statement but they were mentioned in Swanson's police report. Swanson

said that the defendant's interaction in the interview room was normal and that the defendant seemed to be very competent. Swanson read the defendant's written statement aloud at trial.

¶ 23 In the defendant's statement, the defendant said he was with friends driving around when they stopped and suddenly began to "mask up," meaning that they put clothing over their faces. The defendant knew his friends were planning a robbery and felt that he had to go along with it. He took a gun from his friends, deciding that "[he] was going to be the one that held the gun so that no one would get hurt." The defendant and two of his friends walked through a field to the Dollar Tree store, while the third stayed in the car and waited. They entered the Dollar Tree and the defendant pointed his gun at people while his friends did all the talking. They took money from the registers and returned to the car. No one was hurt. They next planned to rob Anna's Pizza. The defendant knew Anna's was closing soon so he stalled his friends. He was still carrying the gun because he did not want anyone to get hurt. When they arrived at Anna's, the doors were locked. As they turned to leave, his friends saw a man in a Jeep in the parking lot. They told the defendant to "get him." The defendant pointed his gun at the man in the Jeep, but the man drove away and no one was hurt. As the three walked through the parking lot of the bar next door, one of his friends took the silver gun from him and he began to walk away. As he was leaving, his two friends stole a purse from a woman who was walking through the parking lot. After he left the parking lot, the defendant noticed police in the area so he started to take his clothes off and ran to the cemetery where he was apprehended. The defendant stated that he only participated in the robberies because he felt pressure from his friends.

¶ 24 Detective Swanson testified that after he typed the defendant's statement, he read it back to the defendant. The defendant told him it was the truth, so Swanson printed it out and presented it to the defendant. Each page included a statement: "Before signing, I have read, or had read to me this page to make certain that it is my statement, and that it is the truth." The

defendant initialed next to that statement on both pages. He also initialed before and after each paragraph. Swanson testified that the defendant never requested an attorney and never indicated that he did not wish to speak with the police. The defendant appeared to understand what was told to him and did not appear to be suffering from any physical condition. Swanson testified that neither he, nor the other detectives in the interview room, made any threats or promises to induce the defendant to give a statement. He did not tell the defendant that he would pull some strings if the defendant signed the statement. Swanson confirmed that the defendant was in the interrogation room for two and a half hours before he signed the written statement. The defendant signed the statement at about 1:26 a.m.

¶ 25 The defendant testified that he was 6'2" and weighed about 145 pounds. He testified that he did not enter the Dollar Tree on September 15, 2011, and was not one of the men who threatened Lamb or Herrera. After that robbery, he did not put on a mask and attempt to enter Anna's Pizza. He did not point a gun at Kundert and did not threaten Pomerene at Mulligan's. At some point in the evening of September 15, 2011, he met Rosser and Johnson near the Hershey's Manor housing complex. They appeared to be out of breath, and he assumed they had been running. As they approached, a black car turned the corner at a high rate of speed and a man with a gun jumped out of the car. The man never identified himself as the police and the car did not have flashing police lights. The defendant fled with Johnson because he saw the gun and was afraid. Once he was a few blocks away, he saw the same car and began to run again. He jumped the fence into the cemetery, tripped over a vase, and fell into a bush. He was immediately pulled out of the bush by men who did not identify themselves as police officers.

¶ 26 The defendant further testified that after he was pulled out of the bush, the men threw him to the ground on his stomach and put him in handcuffs. There were two or maybe three of them. The men began to beat him. He was struck on his face, back, arms, and legs. One of the

men was hitting him with a flashlight. He was hit more than a dozen times. He could not walk or breath so two officers picked him up and put him in the squad car. They brought him to the police station and put him in an interview room. He was there for two hours before the interview started. He did not recall being read his rights or signing a waiver form. He could not talk so the officer interviewing him typed a statement. The officer told him he knew the defendant's father and that if the defendant signed the statement, he would be able to pull strings and get the defendant released.

¶ 27 On cross-examination, the defendant testified that he told the detective who interviewed him that he had been beaten up by the police, but that was not put into the written statement. The defendant identified what he believed to be swelling, scratches, and blood on one of the photographs taken of him at the police station. The State impeached the defendant with his written statement, which contradicted his testimony at trial. The defendant acknowledged signing and initialing the written statement but insisted that the written statement was not true. On re-cross examination, the defendant explained that he signed the statement because the detective told him his father wanted him to sign it and because the detective said he would pull some strings. He also signed it because he was in pain from the beating inflicted by the police shortly before his interrogation. He testified that he was not involved with the robberies.

¶ 28 In closing argument, the defendant pointed out that no witnesses identified him and no forensic evidence supported his identification. Because he was struck numerous times by the arresting officer, the defendant argued that his statement was influenced by police brutality and promises of leniency from Detective Swanson. The defendant also argued that the handgun was inoperable. In instructing the jury, the trial court told the jury that that it was for them to determine whether the defendant made the statement to the police and, if so, what weight should be given to the statement.

¶ 29 On November 5, 2014, following closing arguments, the jury found the defendant guilty on all counts. On February 6, 2015, following a sentencing hearing, the trial court sentenced the defendant to 35 years concurrently for the robberies of Lamb and Herrera, 15 years consecutively for the attempted robbery of Kundert, and 35 years consecutively for the robbery of Pomerene. The defendant was sentenced to 364 days for resisting a peace officer and granted credit for time served in pretrial custody. The defendant filed a motion to reconsider his sentence. On July 10, 2015, the trial court resentenced the defendant to 21 years concurrently for the robberies of Lamb and Herrera, 21 years consecutively for the robbery of Pomerene, and 15 years concurrently for the attempted robbery of Kundert, for a total of 42 years' imprisonment. The defendant filed a timely notice of appeal.

¶ 30 ANALYSIS

¶ 31 The defendant's first contention on appeal is that his trial counsel was ineffective in withdrawing his pretrial motion to suppress his statement to the police. The defendant contends that his statements were the result of physical abuse and, thus, involuntary.

¶ 32 At the outset, we must first consider whether this issue should be considered on direct appeal or would be better addressed through postconviction proceedings. In *People v. Henderson*, 2013 IL 114040, our supreme court noted that when a defendant files a direct appeal challenging defense counsel's failure to file a motion to suppress, "the record will frequently be incomplete or inadequate to evaluate that claim because the record was not created for that purpose." *Id.* ¶ 22. In those situations, postconviction proceedings are a more appropriate mechanism for challenging the effectiveness of trial counsel because the defendant would have the opportunity to create a record specifically addressing whether the motion to suppress was meritorious. *Id.* ¶ 21-22. However, the *Henderson* court considered the merits of the defendant's ineffective assistance of counsel claim on direct appeal because, at trial, defense

counsel had elicited the type of testimony the court would ordinarily consider during a suppression hearing. *Id.* ¶¶ 22, 24. In the present case, as in *Henderson*, we find sufficient facts of record to resolve defendant's ineffective assistance of counsel claim and we will address it.

¶ 33 Under *Strickland v. Washington*, 466 U.S. 668 (1984), a defendant arguing ineffective assistance of counsel "must show that (1) his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and (2) the deficient performance prejudiced the defendant in that, but for counsel's deficient performance, there is a reasonable probability that the result of the proceeding would have been different." *People v. Houston*, 226 Ill. 2d 135, 144 (2007). To satisfy the first portion of the *Strickland* test, a defendant must show that his attorney's performance fell below an objective standard as measured by prevailing professional norms. *People v. Spann*, 332 Ill. App. 3d 425, 430 (2002). There is a strong presumption, which a defendant must overcome, that counsel's performance "falls within the wide range of reasonable professional assistance." *People v. Miller*, 346 Ill. App. 3d 972, 982 (2004). Decisions involving judgment, strategy, or trial tactics will not support a claim of ineffective assistance. *People v. Lindsey*, 324 Ill. App. 3d 193, 197 (2001).

¶ 34 The question of whether to move to suppress evidence is considered a matter of trial strategy. *People v. Little*, 322 Ill. App. 3d 607, 611 (2001). Courts presume that counsel had a legitimate strategic purpose for filing or deciding not to file a motion to suppress evidence. *Id.*; see also *People v. Carballido*, 2011 IL App (2d) 090034, ¶ 44 (the decision to abandon a motion to suppress is typically considered a matter of trial strategy); *People v. Martinez*, 348 Ill. App. 3d 521, 537 (2004) ("As a general rule, matters of trial strategy, such as whether to file a motion to suppress, are immune from claims of ineffective assistance of counsel."). To overcome this presumption and prevail on a claim of ineffectiveness based on counsel's failure to pursue a motion to suppress, a defendant must show that: (1) the unargued motion to suppress would have

succeeded; and (2) there is a reasonable probability that the outcome of the trial would have been different had the evidence been suppressed. *Little*, 322 Ill. App. 3d at 611. If filing a motion to suppress would have been futile, it is axiomatic that failing to file such a motion would not constitute ineffective assistance of counsel. See *People v. Givens*, 237 Ill. 2d 311, 331 (2010).

¶ 35 In the present case, the decision to not pursue a motion to suppress was clearly a matter of trial strategy. When defense counsel withdrew the motion to suppress filed by the public defender, defense counsel stated on the record that the decision was a matter of trial strategy because he did not feel the defendant would prevail on the motion and because he anticipated that the defendant would testify at trial. Further, during pretrial hearings on various motions, the trial court questioned defense counsel as to whether there was a motion to suppress statements. Defense counsel again stated that he withdrew the motion to suppress as a matter of trial strategy. He did not believe that the defendant would have prevailed on such a motion and he anticipated the defendant testifying at trial. He explained that "[f]or those reasons, I made a strategic decision after consultation with my client to press for trial." Accordingly, to overcome the presumption that failing to pursue the motion to suppress was sound trial strategy, the defendant has to prove that the motion to suppress would have succeeded and that, had the evidence been suppressed, the outcome of the trial would have been different. *Little*, 322 Ill. App. 3d at 611.

¶ 36 The key inquiry in determining whether a motion to suppress the defendant's statement would have succeeded is whether the defendant's statement was voluntary. A conviction based on an involuntary confession violates a defendant's constitutional rights. *People v. Hughes*, 2015 IL 117242, ¶ 31. A confession is voluntary if it is made without compulsion or inducement and the individual's will was not overborne at the time of the confession. *Id.* In determining whether a confession was voluntary, courts consider the totality of the circumstances, including

the following factors: the defendant's age, intelligence, background, experience, education, mental capacity and physical condition at the time of the confession, the duration and legality of the detention, whether there was physical or mental abuse of any kind, and whether the police made threats or promises to the defendant. *Id.* No single factor is dispositive. *Id.*

¶ 37 In the present case, the defendant cannot satisfy the *Strickland* test because the record demonstrates that his written statement was voluntary. The defendant was 18 years old at the time of his statement and was a high school graduate. The defendant was given his *Miranda* warnings prior to making his statement and he indicated that he understood his rights. The interview session lasted only two and a half hours and the defendant was asked if he needed any food or water. The evidence indicates that there was a struggle when the defendant was arrested and that the police had to use force to subdue him. Officer Yalden described the use of force as minimal and only necessary because the defendant was resisting arrest.

¶ 38 The defendant argues that he was so badly beaten that he was unable to speak. However, photographs taken of the defendant after his arrest did not show significant abrasions or injuries. The officer who photographed the defendant testified that there were no significant visual injuries. In his brief the defendant argues that injuries akin to a concussion will not be visible. However, Yalden testified that the defendant never asked for medical attention. Detective Swanson testified that the defendant did not complain about any pain and interacted in a normal and competent manner. The defendant also indicated to Swanson that he understood his rights. Finally, the defendant alleges that the confession was involuntary because it was the result of a promise of leniency from Swanson. However, Swanson testified that no one in the interview room threatened the defendant or made any promises in exchange for the defendant's statement.

¶ 39 Further, the jury considered the defendant's testimony that his statement to the police was coerced. The defendant also argued in closing statements that his statement was not voluntary,

as it was the result of police brutality and promises of leniency. The jury verdict indicates that the jury found the officers' testimony more credible than that of the defendant. As the jury rejected the defendant's argument at trial that his statement was not voluntary, there is nothing in the record to suggest that a different result would have been reached in a pretrial motion to suppress. Because the totality of the circumstances show that the defendant's confession was voluntary, the defendant's motion to suppress would not have succeeded, and defendant's claim of ineffective assistance necessarily fails. *Givens*, 237 Ill. 2d at 331.

¶ 40 In arguing that his confession was involuntary, the defendant relies on *People v. Dennis*, 373 Ill. App. 3d 30 (2007). In *Dennis*, the defendant made a statement while he was in a hospital bed being treated for a gunshot wound to the leg. *Id.* at 34. A police officer questioned the defendant in the emergency room after nurses had seen the defendant but while the wound was still bleeding and had not yet been bandaged. *Id.* The officer repeatedly asked the defendant questions as to the location of the gun used in the shooting. Initially the defendant did not respond but after asking several more times the defendant said he did not know the location of the gun. *Id.* After the officer again asked several times about the location of the gun, the defendant became visibly upset and began to cry. *Id.* While the defendant did not divulge the location of the gun, he divulged a motive for committing the shooting at issue. *Id.* at 34-35. The trial court denied the defendant's motion to suppress that statement. *Id.* at 37.

¶ 41 On appeal, this court held that the trial court erred in denying the defendant's motion to suppress. Our determination was based on the defendant's unknown medical condition, the intensity of the questioning over a period of 10 minutes, the absence of *Miranda* warnings, and the visible change in the defendant's demeanor from the time the questioning began to the time of the defendant's statements. *Id.* at 46. As to the defendant's medical condition, we noted that

the record did not show whether the defendant had been treated, given medication, or was in shock at the time of the interrogation. *Id.* at 45.

¶ 42 The defendant's reliance on *Dennis* is unpersuasive. Unlike in *Dennis*, in this case the defendant's medical condition is sufficiently revealed by the record. The photos admitted at trial showed that the defendant had no significant visible injuries and Swanson testified that the defendant did not complain of any pain. The defendant argues that concussion-type injuries are not visible. However, even in his brief the defendant notes that one suffering from a concussion would experience confusion, dizziness, nausea, delayed response time, slurred speech, fatigue, and concentration or memory complaints. While the defendant testified that he had trouble talking, Swanson testified that the defendant spoke in a normal and competent manner. The defendant never told Swanson that he was having any other difficulties.

¶ 43 Further, unlike *Dennis*, the defendant in this case was given *Miranda* warnings and signed a statement indicating that he understood those rights. In this case, also in contrast to *Dennis*, the defendant was not questioned in a hospital bed while suffering from a bleeding and open wound. Rather, the defendant was not questioned until about two hours after he was arrested and thus had time to recoup from the physical exchange that occurred during his arrest. Before he was interviewed, he was offered food, water, and given the opportunity to use a bathroom. Swanson testified that the defendant never requested an attorney and never indicated that he did not wish to speak with the police. Finally, unlike *Dennis*, there was no evidence of a visible change in the defendant's demeanor from the time the interview started to the time he finally admitted involvement in the robberies at issue. Neither Swanson nor the defendant testified as to any type of mental breakdown, crying, or shaking. For all of these reasons, the defendant has not shown that the motion to suppress would have been successful, or that his attorney was ineffective because he withdrew the motion to suppress.

¶ 44 The defendant's second contention on appeal is that the evidence was insufficient to support his convictions for armed robbery with a firearm because the weapon recovered did not satisfy the definition of a "firearm" within the meaning of the statute on which he was charged, 720 ILCS 5/18-2(a)(2) (West 2010). The defendant contends that this case should be remanded for resentencing on the lesser included offense of robbery (720 ILCS 5/18-1(a) (West 2010)).

¶ 45 The defendant's conviction was based on section 18-2(a)(2) of the armed robbery statute, which provides that a person commits armed robbery when he or she takes property from a person by threatening the imminent use of force while armed with a firearm. 720 ILCS 5/18-2(a)(2) (West 2010); *People v. Clark*, 2015 IL App (3d) 140036, ¶ 19. Section 2-7.5 of the Criminal Code of 1961 (Criminal Code) states that, "[e]xcept as otherwise provided in a specific [s]ection, 'firearm' has the meaning ascribed to it in [s]ection 1.1 of the Firearm Owners Identification Card Act [FOID Act]." 720 ILCS 5/2-7.5 (West 2010). Section 1.1 of the FOID Act defines a firearm as "any device *** which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas." 430 ILCS 65/1.1 (West 2010). This definition excludes pneumatic guns, spring guns, paint ball guns, certain BB guns, and signal guns. *Id.*; *People v. Hunter*, 2016 IL App (1st) 141904, ¶ 16.

¶ 46 When reviewing the sufficiency of the evidence, the standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). A criminal conviction will not be overturned unless the evidence is so palpably contrary to the verdict or so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant's guilt. See *People v. Howard*, 209 Ill. App. 3d 159, 171 (1991). A guilty verdict should be given deference and "shall not be disregarded on review unless it is inconclusive, improbable, unconvincing or contrary to human experience." *People v.*

Schorle, 206 Ill. App. 3d 748, 758 (1990). The trier of fact is in the best position to determine the credibility of the witnesses, to resolve any inconsistencies or conflicts in their testimony, to assess the proper weight to be given to their testimony and to draw reasonable inferences from all of the evidence. *People v. Cochran*, 323 Ill. App. 3d 669, 679 (2001).

¶ 47 Viewing the evidence in a light most favorable to the State, a rational trier of fact could have found that the defendant used a firearm in the commission of the offense. The presence of a firearm may be inferred from circumstantial evidence. *People v. Lampton*, 385 Ill. App. 3d 507, 512 (2008). Lamb testified that during the robbery of the Dollar Tree store, one of the assailants pointed a black gun at her. Herrera testified that one of the assailants pointed a silver gun at her. Pomerene also testified that when she was robbed, the assailant pointed a shiny silver gun at her head. Kundert testified that one of the assailants pointed a "black something" at him, which he assumed was a gun. The "unequivocal testimony of a witness that the defendant held a gun is circumstantial evidence sufficient to establish that a defendant is armed [with a firearm] during a robbery." *People v. Fields*, 2014 IL App (1st) 110311, ¶ 36; see also *People v. Toy*, 407 Ill. App. 3d 272, 289 (2011); *People v. Hill*, 346 Ill. App. 3d 545, 549 (2004). As such, the evidence was sufficient to convict.

¶ 48 The defendant argues that the evidence was not sufficient because the silver gun that was recovered was inoperable and, thus, ceased to be a firearm within the meaning of 430 ILCS 65/1.1 (West 2010) and 720 ILCS 5/18-2 (West 2010). In construing a statute, our task is to "ascertain and give effect to legislative intent." *People v. Perry*, 224 Ill. 2d 312, 323 (2007). The best indicator of the legislature's intent is the plain language of the statute. *Id.* When the statute's language is clear, we must apply it as written, without resort to other aids of statutory construction. *Id.*

¶ 49 The defendant acknowledges that in *People v. Hill*, 346 Ill. App. 3d 545 (2004), the Fourth District Appellate Court rejected the same argument the defendant raises here, namely, than an inoperable gun is not a firearm within the meaning of the armed robbery statute. He urges us to depart from *Hill*, and interpret section 65/1.1 of the FOID Act (430 ILCS 65/1.1 (West 2010)) and section 18-2(a)(2) of the armed robbery statute (720 ILCS 5/18-2(a)(2) (West 2010)) as excluding firearms which have been rendered inoperable. While the opinion of one district of the appellate court is not binding on other districts (*O'Casek v. Children's Home & Aid Society of Illinois*, 229 Ill. 2d 421, 440 (2008)), this court may follow the reasoning of a decision in another district when, as in the instant case, the facts are similar and the court's reasoning is persuasive.

¶ 50 In *Hill*, the defendant was charged and convicted of attempted armed robbery. Witnesses testified that the defendant had a chrome or silver automatic handgun with a long barrel. *Id.* at 546-47. On appeal, the defendant argued that he was not proved guilty beyond a reasonable doubt because the gun he was carrying was inoperable and did not qualify as a firearm within the meaning of section 1.1 of the FOID Act (430 ILCS 65/1.1 (West 2010)). The *Hill* court rejected the defendant's argument for three reasons. First, no evidence was presented that the gun was inoperable at the time of the attempted robbery. Second, the evidence was sufficient to show that the gun, even if it was inoperable, could have been used as a dangerous weapon and, therefore, the evidence was sufficient to find the defendant guilty of armed robbery for carrying a dangerous weapon under subsection 18-2(a)(1) of the armed robbery statute (720 ILCS 5/18-2(a)(1) (West 2010)). Third, the court found that the inoperable gun was still a "firearm" within the meaning of the FOID Act. Specifically, the *Hill* court found:

> "According to the [definition of a firearm under the FOID Act], the focus is on the intended purpose of the firearm based upon its design, not the current status of its ability

> to be used as intended. As such, the evidence here, which indicated that defendant was armed with a 'nickel-plated automatic' handgun, was sufficient to qualify as a 'firearm' within the meaning of section 1.1 of the FOID Act despite defendant's contention that it was inoperable." *Id.* at 549.

¶ 51 We find the reasoning in *Hill* persuasive. There is nothing in the plain language of section 1.1 of the FOID Act or the armed robbery statute that requires a firearm to be currently operational and functional to serve as the basis for a conviction under section 18-2(a)(2) of the armed robbery statute. *Cf.* 720 ILCS 5/24-1(a)(4)(i) (West 2010) (unlawful use of weapons statute that expressly provides an exception for certain weapons that are broken down in a nonfunctioning state). Notably, an inoperable firearm is not one of the explicit exceptions section forth in section 1.1 of the FOID Act. Since the legislature has not so limited the statute, we will not read such a limitation into the statute. *Perry*, 224 Ill. 2d at 323-24. Accordingly, the fact that the firearm was inoperable does not preclude a conviction for armed robbery under section 18-2(a)(2). *Hill*, 346 Ill. App. 3d at 549; see also *People v. Williams*, 394 Ill. App. 3d 286, 291 (2009) (for conviction on statute making it unlawful to possess a shotgun with a barrel less than 18 inches in length, it was sufficient under section 1.1 of the FOID Act that the weapon had the looks and characteristics of a firearm, and it was immaterial that the weapon was inoperable and rusted).

¶ 52 Moreover, as in *Hill*, there was no evidence in this case as to when the hammer and pin went missing or whether the firearm was operable at the time of the robberies at issue. Additionally, there was no definitive evidence that the firearm found near the scene of the post-robbery foot chase was the firearm the defendant used at the time of the offense. Accordingly, viewing the evidence in a light most favorable to the State, a rational trier of fact could have found the defendant guilty of armed robbery with a firearm.

¶ 53 The defendant's reliance on *People v. Worlds*, 80 Ill. App. 3d 628, 632 (1980), is unpersuasive. In *People v. Worlds*, 80 Ill. App. 3d 628, 632 (1980), the defendants were convicted of the unlawful use of a weapon. *Id.* at 630. On appeal, the reviewing court reversed those convictions. *Id.* at 633. The *Worlds* court held that the "so-called gun" was in "so decrepit a state because of rust and the absence of a handle that it could hardly be classified as a gun." *Id.* at 632. However, the unlawful use of weapons statute at issue in *Worlds* explicitly excluded weapons under certain conditions, including guns "broken down in a non-functioning state." *Id.* In the present case, unlike *Worlds*, no similar statutory exemption applies. Accordingly, the evidence was sufficient for a rational trier of fact to determine that the gun recovered following the robberies was a firearm within the meaning of section 1.1 of the FOID Act.

¶ 54 CONCLUSION

¶ 55 For the foregoing reasons, the judgment of the circuit court of Winnebago County is affirmed.

¶ 56 Affirmed.