2017 IL App (1st) 142555-U

No. 1-14-2555

Third Division
March 29, 2017

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JEROME ROBINSON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County. No. 11 CR 2590 Honorable Matthew E. Coghlan, Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Justices Lavin and Pucinski concurred in the judgment.

O R D E R

¶ 1 *Held*: Trial counsel's performance was not deficient and no prejudice resulted to defendant where counsel did not renew a motion to suppress evidence a second time at trial. Defendant failed to preserve any claim of improper admonishment regarding his right of self-representation. Trial court did not improperly consider factors implicit in the offense during sentencing and did not abuse its discretion by sentencing defendant within statutory guidelines.

¶ 2 Following a bench trial, defendant Jerome Robinson was convicted of two counts of aggravated discharge of a weapon and two counts of aggravated unlawful use of a weapon and sentenced to concurrent terms of eight and three years in prison, respectively. On appeal,

defendant contends that his trial counsel was ineffective for failing to renew a motion to suppress evidence at trial, that the trial court improperly admonished him regarding his right to represent himself, that the court improperly considered factors implicit in the offense during sentencing and that his sentence is excessive. We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. Suppression Hearing

¶ 5 Following a shooting at a sandwich shop, defendant was arrested in his girlfriend's nearby apartment on January 20, 2011. He was charged with multiple counts of attempted murder, aggravated discharge of a weapon, and aggravated unlawful use of a weapon, and was appointed counsel on March 3, 2011. Prior to trial, defendant filed a motion to suppress evidence.

¶ 6 At the hearing on the motion, Diamond Miller, defendant's long-term girlfriend, testified that she and defendant had plans to spend the night together in her studio apartment on January 20, 2011. Defendant arrived at her building at 1:40 a.m. and Miller went downstairs to let him in. Defendant was not sweating, out of breath, or carrying a gun. The two proceeded up to Miller's apartment where they got ready for bed. Shortly thereafter, four police officers "just walked into" the apartment. A security guard was also present. The door to the apartment had been locked and the officers did not break the door to enter. Miller testified on redirect examination that the security officers had access to keys. The police officers handcuffed Miller and brought her across the hall to a laundry room. There, they yelled at her, asking her "where the gun is and stuff." They eventually brought her back to the apartment as other officers brought defendant out in handcuffs. The police officers ordered Miller to sign a paper, which they indicated said that a recovered weapon did not belong to

her. Miller did not read the document and did not understand that it was in actuality a form consenting to a search of her apartment. The officers then left.

¶ 7 Chicago police officer Sajit Walter testified that he and his partner received a radio transmission regarding a shooting at 1:50 a.m. on January 20, 2011. The offender was described as "a male black, about 5'7" in height, wearing all black clothing, r[unning] eastbound." The officers then received a subsequent message indicating that the offender had "fled" into a nearby apartment building. They drove to the building within two to three minutes and a security guard directed them to the fifth floor. On the fifth floor, Walter and his partner met two other police officers and two security guards. The guards told the officers that they had seen an individual "trying to hide the gun and run into the apartment and go up to the floor." They further directed the officers to unit 5 East. On cross-examination, Walter testified that the security guards had indicated that the offender had run up to the unit. Both the officers and the guards subsequently walked to 5 East's door. Walter knocked on the door and said, "Chicago Police." Miller answered the door. When the officers gave her a description of the offender, Miller replied, "Yes, my boyfriend is in there." The officers then rushed into the apartment due to "exigent circumstances" and found defendant lying on a mattress. Walter and two of the other officers detained defendant and brought him to the hallway for the security guards to identify. The remaining officer, Officer Laurence Stiles, recovered a firearm from the apartment.

¶ 8 Stiles testified that he and his partner also responded to the apartment building following the shooting. The officers went to apartment 5E where two of the building's security guards told them that they were patrolling outside and saw a man "r[u]n through the building with a gun." The guards indicated that they knew who the man was from "prior run-ins." When later

asked if the guards had indicated whether the man was running or walking, Stiles clarified that the guards said the man "ran inside the building. They didn't say step by step, but they said he ran into the building." Two other police officers also arrived at the apartment. Stiles "believe[d]" that one of the security guards knocked on the unit's door and Miller answered. "As a group," the officers spoke to Miller and asked her if her boyfriend was in the apartment. She answered that he was sleeping and pointed back into the room. The officers asked if they could speak with him and entered the apartment. Entering behind the other officers, Stiles noticed defendant sleeping on a mattress. In the corner of the room, Stiles saw a handgun inside an open shoe box. He also saw a black jacket and black "floppy cap," similar to clothes mentioned in the radio transmission, in the corner of the room. He then told the other officers to arrest defendant. Stiles did not recall Miller being taken out of the room.

¶ 9 Police officer John Cruz testified that he was present for the initial entry into Miller's apartment. After the firearm was recovered and defendant was detained, Cruz presented Miller with a consent-to-search form. He read the form to her and explained that the officers had already recovered the gun and wanted to search for any other evidence related to the crime. Miller then appeared to read the form and signed it at about 2:10 a.m. She was never handcuffed or taken to a laundry room.

¶ 10 Detective Michael Pietryla testified that he and another detective interviewed Miller at a police station some time after 1:00 a.m. on the night of the shooting. Miller stated that she had gone to the sandwich shop sometime prior to midnight to get something to eat. Defendant was not in her apartment when she left nor when she returned. She then visited a friend who lived across the hall. While Miller was with her friend, she heard multiple gunshots, but was not disturbed because such activity was common in the area. Eventually,

Miller returned to her apartment and found defendant sleeping. Miller told Pietryla that police officers later knocked on the door and spoke with her. She read and signed a consent form. She did not tell Pietryla that she was taken into a laundry room in handcuffs.

¶ 11 Following the testimony, the trial court ruled that the police had exigent circumstances to enter the apartment, noting that it found Miller's testimony had been impeached. It denied defendant's motion to suppress evidence and quash arrest.

¶ 12 B. Discussion of Proceeding *Pro se*

¶ 13 During the course of the suppression hearing, testimony and the court's ruling were postponed for multiple weeks because defendant's appointed attorney became ill and was hospitalized. Following the court's ruling on February 18, 2013, there were several continuations of defendant's case over eight months due to new assistant public defenders being assigned and difficulties arranging visits with defendant in jail.

¶ 14 On October 17th, 2013, defense counsel indicated that defendant had raised the issue of representing himself. Defendant then addressed the court, "I told [defense counsel] that I wanted to come demand trial. She said if I demanded trial that she won't be able to represent me. So, with that being said, I'm forced not to have [a] representative to represent me due to the fact that I want to demand." The trial court responded that a demand for trial is a matter of strategy that is up to the lawyer, it continued:

> "Even though she disagrees with you on strategy, that doesn't mean you're forced to represent yourself. You may wish to reconsider as to whether or not you really think that your best interests are represented by being your own lawyer, or whether or not you're, in the long run, your best interests are met by allowing her to do her job. Do you understand what I'm saying?"

Defendant responded "yes" and the court suggested that he think about the issue. It also stated that if defendant wished, it would admonish him regarding self-representation. Defendant subsequently indicated that his family was attempting to obtain a new lawyer for him. He agreed to a two week continuance to seek new counsel.

¶ 15 At the next status hearing, defendant stated, "I guess I'm demanding trial." When the court asked if he wanted to represent himself, the following colloquy occurred:

"THE DEFENDANT: I told you once before that I don't want to represent myself, but I'm forced. I'm not trying to keep waiting.

THE COURT: Well, that's not how it works. Do you want to represent yourself or not?

THE DEFENDANT: No, I don't."

The court informed defendant that if he did not want to represent himself, it was his counsel's decision when to demand trial. The attorneys and the court then discussed marking the case as a priority and scheduling it for a February trial. Defendant again expressed displeasure at waiting. He asked the court how long he would have for discovery if he were to represent himself. The court replied that if defendant wanted to proceed *pro se*, it would first order a behavioral clinical examination to determine if defendant was fit to represent himself, which would likely take about 30 days. It would then give the State an opportunity to copy the discovery materials and redact anything to which a *pro se* litigant would not normally be entitled. The court hypothesized that it would take "a week or two." Finally, it stated that defendant would have as long as he liked to determine whether he was ready for trial. The court noted that defendant's appointed counsel was experienced and ready to set the trial "down for trial right now in February and mark it as a priority," Defendant responded,

"Whatever she gone [sic] do." Trial was set for February 5, 2014. On that date, both defense counsel and the State stated that they were not ready, and the trial was ultimately continued to May 28, 2014.

¶ 16 C. Trial

¶ 17 At defendant's bench trial, John Jackson testified that he was working at the sandwich shop on January 20, 2011. The shop had a counter that split the public area of the restaurant from the employees' location. Above the counter there was bulletproof glass. At about 12:30 a.m. that night, "a black young man" wearing dark clothes and a "Russian cap" entered accompanied by a woman. The man asked Gulam Fazil, another employee, for a cigarette. The man and Fazil argued for about a minute. Jackson did not recall the substance of the argument, but testified that "it was some loud talking going back and forth, swearing." The man and woman then left the restaurant. Ten or fifteen minutes later, the man returned, told the other customers to leave, and said he was "going to shoot the place up." He pointed a gun at the glass, in the direction of Jackson and Fazil, and began to shoot. After about six or seven shots, Jackson and Fazil ducked behind the counter. The man then started shooting below the counter and some of the bullets went through it. When the firing stopped, Jackson looked out over the counter and saw the man putting another "clip" of ammunition into his gun. The man continued firing until he had emptied the second clip. The man then left the restaurant. Later that day, Jackson identified the shooter in a police lineup. However, at the time of trial he could no longer remember what the man looked like.

¶ 18 Fazil testified that around 12:30 a.m. on the night of the shooting, defendant entered the store and began to verbally "abus[e]" Fazil because he would not give him a cigarette. He swore at Fazil for a short time before leaving the restaurant. Defendant was wearing a black

jacket and a Russian cap. Around 45 minutes later, defendant returned with a gun. He pointed the gun directly at Fazil and began to fire into the glass. After about six shots, Jackson told Fazil to lie down on the floor, and both men did so. During a break in the shooting, the two employees got up and saw defendant reloading the gun. He then began shooting again and "emptied the gun." After defendant left, Fazil called the police. Later, Fazil identified defendant in a police lineup.

¶ 19 Officer Stiles testified that he and his partner received radio calls around 1:50 a.m. regarding the shooting and drove to an apartment building about a half block from the sandwich shop. The police officers found two security guards monitoring the building's parking lot and had a conversation with them. The guards led Stiles, his partner, and other responding officers to an apartment in the building. Officers knocked on the door and Miller answered at about 1:55 a.m. Following a conversation, she let them into the apartment and Stiles saw defendant sleeping on a mattress. As other officers arrested defendant, Stiles saw a 9-millimeter, semiautomatic handgun in an open shoebox. He recovered the weapon and noticed that it contained an empty magazine. Officers subsequently seized .22-caliber bullets, a Russian-style hat, and a black jacket. An empty ammunition magazine was found within the jacket's pocket. An arrest report listed the time of defendant's arrest as 2:08 a.m. During Stiles's testimony defense counsel renewed the motion to suppress evidence and quash arrest and the trial court overruled the objection.

¶ 20 Officer Pietryla testified that both Jackson and Fazil separately identified defendant as the shooter in lineups following the shooting. Other State witnesses testified that bullet casings and fragments were recovered from the sandwich shop, and photographs were taken of bullet damage in the window area, in the counter, and under the counter. Gunshot residue was

present on the black jacket recovered by the officers and the recovered bullet casings matched the gun found in Miller's apartment.

¶ 21 Six time-stamped video clips from security cameras located around Miller's apartment building were also entered into evidence. One clip shows an overhead view of the apartment building's parking lot from 1:44:00 - 1:48:59 a.m. However, there are multiple portions of time missing throughout the video, ranging from 4 seconds up to 36 seconds. It does not show anyone running through the parking lot. The next clip shows a woman entering an elevator at 1:44:27 a.m. while talking on the phone and exiting at 1:45:09. Another clip shows a woman walking through the lobby and leaving the building at about 1:45 a.m., she returns two minutes later with a man in a dark jacket and hat with ear flaps. The two then proceed back through the lobby. The next clip shows the same individuals calling for an elevator at about 1:47:13 a.m. Another clip from inside the elevator shows the individuals entering at 1:47:22 a.m. and exiting at 1:47:50 a.m. The final clip shows the individuals walking through a hallway at 1:50:13 a.m.

¶ 22 Following the State's case in chief, defendant rested without presenting evidence.

¶ 23 The trial court found defendant not guilty of attempted murder, but guilty of two charges of aggravated discharge of a weapon and two charges of aggravated unlawful use of a weapon. It sentenced him to concurrent sentences of eight years for each aggravated discharge of a weapon count and three years for the aggravated unlawful use of a weapon count.

¶ 24 II. ANALYSIS

¶ 25 A. Ineffective Assistance of Counsel

¶ 26 Defendant first contends that his trial counsel was ineffective for failing to renew his suppression arguments for a second time at the close of the State's evidence. He argues that the video evidence and Officer Stiles's trial testimony regarding the timeline of events corroborate Miller's hearing testimony and impeach the hearing testimony of the officers. He asserts that had counsel drawn the court's attention to this evidence, it would have discredited the officers' testimony and granted the motion to suppress. The State responds that trial counsel's decision not to renew the motion was sound trial strategy and that defendant has failed to show prejudice resulting from counsel's alleged ineffectiveness.

¶ 27 Claims of ineffective assistance of counsel are evaluated under the two-prong test set forth by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Henderson*, 2013 IL 114040, ¶ 11. To support such a claim, a defendant must demonstrate that (1) counsel's representation was objectively deficient, and (2) as a result, he suffered prejudice that deprived him of a fair trial. *Id.*

¶ 28 Although claims of ineffective assistance of counsel regarding motions to suppress evidence typically involve an attorney's failure to initially file such a motion, this court has previously considered a claim of ineffectiveness for failure to renew such a motion to suppress. *People v. Causey*, 341 Ill. App. 3d 759, 766-67 (2003) (concluding that a defendant could argue ineffectiveness for failing to renew a suppression motion "because his attorney's omission would prevent the defendant from relying on evidence presented at trial to support his argument to this court.") In analyzing such a claim, we employ the same principles that would control an ineffectiveness claim for failure to file a suppression motion. See *id.*

¶ 29 In addressing the first prong of the *Strickland* test, our review of "counsel's performance is highly deferential," and we "indulge a strong presumption that counsel's conduct falls

within the wide range of professional assistance." *People v. Pecorro*, 175 Ill. 2d 294, 319 (1997). Defendant must therefore overcome the strong presumption that the challenged actions were the product of sound trial strategy. *People v. Manning*, 241 Ill. 2d 319, 327 (2011). As such, "matters of trial strategy are generally immune from claims of ineffective assistance of counsel." *Id.* This court has previously held that the decision whether to file a motion to suppress evidence is a matter of trial strategy and typically may not be successfully challenged as incompetent representation. *People v. Medrano*, 271 Ill. App. 3d 97, 101 (1995); see also *People v. Martinez*, 348 Ill. App. 3d 521, 537 (2004). In matters of trial strategy, the presumption that the strategy was sound may only be overcome where it is so unsound that "counsel entirely fails to conduct any meaningful adversarial testing." (Internal quotation marks omitted.) *People v. Cooper*, 2013 IL App (1st) 113030, ¶ 63. In other words, defendant must show that no reasonably effective defense attorney, confronted with similar circumstances, would engage in similar conduct. *People v. Watson*, 2012 IL App (2d) 091328, ¶ 24. The fact that a given trial strategy proved ultimately unsuccessful does not constitute proof of ineffective assistance. *Medrano*, 271 Ill. App. 3d at 101. Moreover, counsel's decision not to file a futile motion is not deficient representation. See *People v. Robinson*, 299 Ill. App. 3d 426, 435 (1998).

¶ 30 Defendant has not shown that trial counsel's representation was so objectively deficient that no reasonably effective defense attorney would engage in similar conduct. Counsel fully litigated the motion to suppress prior to trial and then subsequently renewed the motion to preserve it for purposes of appeal. Accordingly, counsel provided meaningful testing of the State's evidence. We cannot find that counsel's decision not to raise his unsuccessful arguments for a third time before the trial court was not sound strategy and thus objectively

deficient. This is particularly true where, as we next discuss, any renewed motion would have been based on new evidence that was largely inconsequential and unlikely to change the trial court's determination.

¶ 31 To prove the second prong under *Strickland*, a defendant asserting ineffectiveness for failure to renew a motion to suppress must show that the trial court would have granted the renewed motion, and further, that the ultimate disposition of his trial would have been different. *Causey*, 341 Ill. App. 3d at 767; see also *Henderson*, 2013 IL 114040, ¶ 15 ("[W]here an ineffectiveness claim is based on counsel's failure to file a suppression motion, in order to establish prejudice under *Strickland*, the defendant must demonstrate that the unargued suppression motion is meritorious, and that a reasonable probability exists that the trial outcome would have been different had the evidence been suppressed.) Defendant has failed to do so.

¶ 32 The trial court ruled that the police officers' entry into Miller's apartment was justified by exigent circumstances. Warrantless entry into the home is permitted where governmental actors have probable cause and exigent circumstances justify the intrusion. *People v. Dawn*, 2013 IL App (2d) 120025, ¶ 22 (citing *People v. James*, 163 Ill. 2d 302, 311-12 (1994)). Such exigencies include when officers are responding to emergencies, preventing the imminent destruction of evidence, or hotly pursuing a fleeing suspect. *People v. Wear*, 229 Ill. 2d 545, 563 (2008). On appeal, defendant does not argue that the officers' testimony at the suppression hearing failed to establish the existence of probable cause or exigencies that justified their entry into Miller's apartment. Instead, defendant solely argues that new testimony and the videos produced at trial rendered the officers' testimony incredible, and thus the trial court would have reversed its earlier decision relying on that testimony.

¶ 33 Defendant first argues that Officer Stiles's trial testimony that defendant was arrested at 2:08 a.m., when paired with Officer Walter's testimony that he arrived at the apartment building at 1:53 a.m., impeaches the officers' accounts of events because the actions described could not have taken so long as 13 or 15 minutes. He further asserts that the timeline corroborates Miller's testimony, which asserted that the officers had taken her into a laundry room and coerced her consent. This argument is unpersuasive. First, the officers' testimony involved estimations of times and summarized accounts of the actions they took. Thus, the 13 or 15 minute span of time could quite plausibly be nothing more than the officers, who were focused on reports of an armed and dangerous offender, being less than perfectly accurate on their memories of the exact time that events took place. Any discrepancy presented by Stiles's testimony of a 2:08 a.m. arrest is not so significant that it was likely to affect the trial court's credibility determinations. Moreover, even if we accept defendant's contention that the course of events took 13 to 15 minutes, it is unclear that such a period of time contradicts the sequence of events put forth by the officers. The officers arrived at the building, spoke with security guards, walked to Miller's apartment, knocked on the door, spoke with Miller, entered the apartment, and arrested defendant before writing their reports. It is not inconceivable, nor even unlikely, that the entire process took 13 to 15 minutes to complete.

¶ 34 Defendant also argues that the surveillance videos entered into evidence impeach the hearing testimony of the officers and corroborate Miller's account. Specifically, he argues that the parking lot video proves that he did not run from the sandwich shop to the apartment building. He asserts, without any support from the record, that if defendant ran east as the officers' testimony suggested, then he would have had to have run through the building's

parking lot. However, even if we assume, *arguendo*, that this was the only way in which defendant could approach the building, defendant's argument fails. There are large gaps missing from the parking lot video, some of them long enough to allow an individual sufficient time to run through the area without being included in the video. Thus, it is unlikely that the trial court would have reversed its decision based on the parking lot video.

¶ 35 Defendant also asserts that the videos show that Miller did walk down to the lobby to let defendant in and that defendant and Miller walked, not ran, through the building to her apartment. First, we note that viewing all of the testimony in context of both direct and cross-examination, it is ambiguous what the security guards told the officers regarding defendant's actions. Although it is clear that the guards indicated that they saw defendant run into the building, it is less clear whether he continued running once inside. Regardless, any impeachment provided by the video attacks the credibility of the security guards, and not that of the police officers. The officers did not testify that they had seen defendant running, but merely that the guards had indicated that he had run past. The video itself provides no evidence impeaching the officers' testimony. Thus, we cannot say that defendant has shown that a renewed motion to suppress would likely have been granted by the trial court.

¶ 36 The minor inconsistencies cited by defendant are insignificant and unrelated to the primary substance of the officers' testimony supporting the trial court's finding of exigent circumstances. Accordingly, we find that he has failed to meet his burden under either prong of the *Strickland* test and that counsel provided effective representation.

¶ 37 B. Waiver of the *Pro se* Representation

¶ 38 Defendant next contends that the trial court improperly admonished him on his right to proceed *pro se*, thus rendering his waiver of the right unintelligent and involuntary. He

asserts he only waived his right after the trial court threatened him with an unnecessary behavioral clinical examination, offered the State an inordinate amount of time to redact discovery, and falsely promised him a February trial.

¶ 39 Before addressing the merits of defendant's contention, we must address the issue of forfeiture. The State argues that defendant forfeited this issue by failing to contemporaneously object to the admonishments and include the issue in a post-trial motion. It further argues that defendant has made no argument under the plain error doctrine and has therefore forfeited any plain error review. Defendant offers no response to the State's forfeiture argument.

¶ 40 A defendant generally forfeits any issue that he or she does not raise in a contemporaneous objection and in a written, post-trial motion. *People v. Herndon*, 2015 IL App (1st) 123375, ¶ 24 (citing *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)). The plain error doctrine provides a limited exception to such a forfeiture, allowing " 'a reviewing court to consider unpreserved error when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence.' " *Id.* (quoting *People v. Herron*, 215 Ill.2d 167, 186-87 (2005)). Typically, a claim of improper admonitions is reviewable under the second prong of plain error analysis. See *People v. Brzowski*, 2015 IL App (3d) 120376, ¶ 42. However, where a defendant fails to raise an argument under either prong of plain error, he or she waives the issue. See *People v. Nieves*, 192 Ill. 2d 487, 503 (2000); see also *People v. Hillier*, 237 Ill. 2d 539, 545 (2010) ("A defendant who fails to argue for plain-error review obviously cannot meet his burden of persuasion.") As defendant has made no argument concerning forfeiture, he has waived the issue.

¶ 41 Even absent forfeiture, defendant's arguments must fail. Defendant appears to argue that an affirmative, intelligent, and voluntary waiver of his right to proceed *pro se* was required, despite the fact that he never made a clear and unambiguous request to proceed without counsel. He has provided no precedent that supports this claim. This is because the procedural safeguards involving the representation of a defendant are chiefly concerned with his right to counsel. A defendant is entitled to counsel at all "critical stages of a criminal prosecution and this important right will not be taken away unless affirmatively waived by a defendant." *People v. Burton*, 184 Ill. 2d 1, 22 (1998). Any waiver of the right to counsel, and consequently any assertion of the right to proceed *pro se*, "must be clear and unequivocal, not ambiguous." *Id.* Although a defendant also has a right to proceed *pro se*, he is presumed to have waived this right unless he "articulately and unmistakably demands to proceed *pro se*." See *People v. Baez*, 241 Ill. 2d 44, 116 (2011). We must "indulge in every reasonable presumption against waiver of the right to counsel." *Id.*

¶ 42 It is clear from the record that defendant did not make a clear and unequivocal request to proceed *pro se*. Although he inquired about representing himself, he also indicated several times that he did not truly want to forgo an attorney, but rather, was concerned with the speed with which proceedings were progressing. Moreover, defendant's assertions on appeal regarding the trial court's "coerc[ive]" conduct grossly misconstrue the record. The trial court did not "threaten" defendant with improper delays, but merely indicated that it believed an examination was necessary before he allowed defendant to proceed without counsel and that the State would need time to redact discovery materials that he was not entitled to see. Additionally, the trial court never promised defendant a February trial, and certainly did not

do so as an attempt to bargain with defendant. It is clear from the record that the trial court was intent on setting the matter for trial as early as possible and proceeded to do so.

¶ 43 C. Sentencing

¶ 44 1. Sentencing Background

¶ 45 Following the trial court's finding of guilt on the charges of aggravated discharge of a weapon and aggravated unlawful use of a weapon, the trial court considered defendant's pre-sentence investigation report. The report indicated that defendant had dropped out of high school, but had held several jobs after leaving school, including as a dishwasher and as a grocery store worker. It also indicated that he had a close relationship with his family and had been offered housing by his aunt after his release. He reported that he was in a long-term relationship with Miller. Defendant had one prior conviction for the possession of cannabis in 2008. At his sentencing hearing, defendant's mother testified that defendant helped to support the family and had plans to become a mortician. A letter from defendant's sister was also entered. The State argued in aggravation that the crime threatened serious harm. Defense counsel argued in mitigation that defendant was 20 years old at the time of the offense, had only one prior criminal offense, and had strong family ties. In allocution, defendant stated, "I learned my lesson."

¶ 46 The trial court noted that it had reviewed the pre-sentence investigation and all the evidence in mitigation and aggravation. The court also stated:

"This is a serious case. I think that the defendant's conduct threatened serious harm.

Certainly, you light up a store like this. The audacity of it. You don't fire one shot. It is not in the air. It's not in the ceiling. It is directly at these two individuals and you don't know whether or not that plate glass is going to break or not.

It's across the street from CHA Housing. Security guards could have responded to the shots. Police officers could have responded to the shots, resulting not only in perhaps their injury or – but also the defendant's injuries."

The trial court then sentenced defendant to concurrent sentences of eight years for each aggravated discharge of a weapon count and three years for the merged count of aggravated unlawful use of a weapon count.

¶ 47 Defendant filed a post-sentencing motion which argued that his sentence was excessive and that the court "improperly considered matters that are already implicit in the offense."

¶ 48 2. Improper Aggravating Factors

¶ 49 Defendant contends that the trial court considered improper factors in aggravation while sentencing defendant. He argues that the trial court considered an element of the offense in aggravation, specifically the charges of aggravated discharge of a firearm, when it mentioned that defendant had fired in the direction of the victims. He also asserts that the trial court considered matters implicit in the offense when it mentioned that defendant had potentially endangered himself and responding law enforcement. The State responds that defendant forfeited these issues by failing to include them in his post-sentencing motion.

¶ 50 In order to preserve a sentencing issue, a party must raise the issue in a contemporaneous objection and a written post-sentencing motion. *Hillier*, 237 Ill. 2d at 544. However, a defendant is not required to set forth his claims with the same detailed and precise manner required of an appellate brief. See *People v. Heider*, 231 Ill. 2d 1, 18 (2008) (finding no forfeiture where defendant raised "the same essential claim.") Having reviewed the record, we find that defendant has sufficiently preserved his claims that the trial court improperly considered matters implicit in the offense and therefore address the merits of his claims.

¶ 51 The propriety of a sentence is generally within a trial court's discretion; however, the determination of whether a court improperly relied on a factor in aggravation presents a question of law to be reviewed *de novo*. *People v. Abdelhadi*, 2012 IL App (2d) 111053, ¶ 8. There is a strong presumption that the trial court based its sentencing determination on proper legal reasoning. *People v. Dowding*, 388 Ill. App. 3d 936, 942-43 (2009). The defendant bears the burden of establishing that a sentence was based on improper considerations. *Id*. at 943.

¶ 52 A trial court may not consider a factor implicit in an offense as an aggravating factor in sentencing. *People v. Phelps*, 211 Ill. 2d 1, 12, 284 (2004). However, although elements inherent in the offense are off-limits as aggravating factors, the court cannot be expected to ignore factors relevant to a sentencing decision. *People v. Saldivar*, 113 Ill. 2d 256, 268 (1986). Accordingly, the trial court may consider the particular nature and circumstances of the crime in considering the seriousness of the offense. *People v. Valadovinos*, 2014 IL App (1st) 130076, ¶ 55.

¶ 53 When determining whether a sentencing court considered proper factors, we must consider the entire record, "rather than focusing on a few words or statements by the trial court." *Dowding*, 388 Ill. App. 3d at 943. Moreover, a sentencing court's summarization of the facts of a case does not necessarily indicate consideration of an improper factor. See *Abdelhadi*, 2012 IL App (2d) 111053, ¶ 12 (distinguishing between the consideration of a factor and the mere "summary of the circumstances of the case.")

¶ 54 Defendant has failed to affirmatively show that the trial court improperly relied on factors implicit in the offense of aggravated discharge of a firearm. Although the court mentioned that defendant had pointed a firearm at the victims, it was reiterating the facts of the case.

The court clearly placed its focus on the fact that defendant had "li[t] up" the store with multiple shots, thus raising the seriousness of the harm threatened. Similarly, the court's references to potential harm to defendant or responding officers do not indicate an improper reliance on the risks as aggravating factors, but a description of the offense. Even if the references are taken as reliance, defendant concedes that while the risk of harm may be implicit in the offense of aggravated discharge of a firearm, the degree of risk may be considered in aggravation. See *People v. Ellis*, 401 Ill. App. 3d 727, 731 (2010). Any consideration of the risk to defendant or potential responding officers by the trial court was focused on the heightened degree or risk caused by the crimes proximity to government housing. Accordingly, we find that the trial court did not rely on improper factors in aggravation.

¶ 55 Defendant also argues that the trial court's consideration of the risk of harm caused by defendant's actions was against the manifest weight of the evidence because defendant fired at bullet proof glass. This argument is unpersuasive. The trial court's findings of fact are entitled to great deference, and will not be overturned unless they are against the manifest weight of the evidence. *People v. Deleon*, 227 Ill. 2d 322, 332 (2008). Additionally, a sentencing court may draw reasonable inferences from the evidence presented. *People v. Johnson*, 149 Ill. 2d 118, 155 (1992). Here, the victims testified that defendant fired an entire clip of bullets at them, before reloading and firing a second full clip. Defendant contends that his actions were harmless because the glass was "bulletproof." However, the trial court could make the reasonable inference that given enough bullets, bulletproof glass may fail. Furthermore, even if bulletproof glass is presumed to be impregnable, the testimony indicates that defendant also fired into the counter below the glass and that some of the bullets passed

through it. Clearly, there was evidence presented supporting the trial court's consideration of a risk of harm.

¶ 56 3. Excessive Sentence

¶ 57 Finally, defendant contends that his eight year sentence for aggravated discharge of a firearm is excessive because his actions caused little risk of harm, he has a minimal criminal record, a good employment record, and family support.

¶ 58 All sentences must reflect the seriousness of the offense committed and the objective of rehabilitating offenders to useful citizenship. *People v. Cooper*, 283 Ill. App. 3d 86, 95 (1996). The trial court must consider all factors of mitigation and aggravation. *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). A reviewing court may only reduce a sentence when the record shows that the trial court has abused its discretion. *People v. Streit*, 142 Ill. 2d 13, 19 (1991); *People v. Martin*, 2012 IL App (1st) 093506, ¶ 47. The reviewing court may not reverse the sentencing court just because it could have weighed the factors differently. *Streit*, 142 Ill. 2d at 19.

¶ 59 Aggravated discharge of a firearm as charged is a Class 1 felony with a sentencing range of 4 to 15 years. 720 ILCS 5/24-1.2(b) (West 2010); see also 730 ILCS 5/5-4.5-30(a)(West 2010). A sentencing decision that falls within the statutory range is entitled to great deference. *People v. Hill*, 408 Ill. App. 3d 23, 29 (2011). Such a sentence will not be overturned unless it is "greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *People v. Fern*, 189 Ill. 2d 48, 54 (1999).

¶ 60 Defendant's sentence for aggravated discharge of a firearm was well within the statutory range. The trial court explicitly stated that it reviewed all aggravating and mitigating factors.

Defendant does not argue that the trial court refused to consider mitigating factors; rather, he argues that the court incorrectly undervalued them. We will not reverse the sentencing court just because the factors could have been weighed differently. *Streit*, 142 Ill. 2d at 19. We cannot find that the trial court abused its discretion in sentencing defendant to eight years' incarceration for aggravated discharge of a firearm.

¶ 61 III. CONCLUSION

¶ 62 For the foregoing reasons, defendant has failed to show that his trial counsel was constitutionally ineffective and has forfeited any argument that the trial court improperly admonished him regarding self representation. The trial court did not rely on improper aggravating factors in sentencing defendant, and his 8 year sentence was not excessive. Accordingly, we affirm the judgment of the circuit court of Cook County.

¶ 63 Affirmed.