2017 IL App (1st) 143263-U

No. 1-14-3263

Order filed June 28, 2017

Third Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 15797
	)	
NICHOLAS SAEGEBRECHT,	)	Honorable
	)	Bridget Jane Hughes,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Lavin and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Although hearsay evidence connecting defendant to the location of a drug transaction was admitted at trial, this error was harmless when two witnesses identified defendant as the person who engaged in a hand-to-hand transaction with an undercover police officer. Defendant cannot establish that the trial court failed to consider certain mitigating evidence when the court specifically referred to that evidence, in mitigation, when sentencing defendant.

¶ 2 Following a jury trial, defendant Nicholas Saegebrecht was found guilty of the delivery of a controlled substance and sentenced to seven years in prison. On appeal, defendant contends that the trial court erred when it admitted, over the defense's objection, a State exhibit containing

hearsay evidence connecting defendant with the location of a drug transaction because it improperly bolstered the State's case. Defendant further contends that the trial court erred when it imposed a seven-year prison term "despite substantial mitigation" and did not detail "the reasons for imposing such a harsh sentence." Defendant finally contends that the trial court improperly imposed the $250 DNA assessment when his DNA was already in the State Police database. We affirm, and correct the fines and fees order.

¶ 3 At trial, Detective Allison Teevan testified that on June 21, 2013, she received an undercover assignment. Specifically, Detective William Ryan told her about a man named Nicholas Saegebrecht who was selling Ecstasy and gave her a cellular phone number. After both phone calls and text messages, she drove to 1539 South Yale in Arlington Heights. Once there, Teevan parked. She then observed a male exit the front door of 1539 South Yale and walk to the driver's side of her car. At trial, she identified defendant as that person. Teevan gave defendant $140 and defendant gave her a small plastic baggie containing eight pink pills. She believed these pills were Ecstasy. Defendant went back inside and she drove away. Teevan then met with Detective Ryan. Ryan showed her a photograph, which she believed was a driver's license photograph. Teevan identified the person in the photograph as the man who sold her the pills, that is, defendant. She also gave Ryan the pills. At trial, Teevan identified People's Exhibit No. 2 as the photograph that Ryan showed her. Although there was writing on the exhibit, Ryan previously showed her just the photograph.

¶ 4 Detective William Ryan testified that he observed as Teevan parked and an individual exited the front door of 1539 South Yale. Ryan identified defendant in court as that person. He observed as defendant approached Teevan's vehicle. After what appeared to be a short

conversation, Ryan observed Teevan extend currency to defendant and defendant extend his hand to Teevan "in what appeared to be a hand-to-hand exchange of items." He could not see what defendant gave Teevan. Defendant then went back inside. Later, at a police station, Ryan showed Teevan an Illinois Secretary of State database driver's license photograph of defendant. Teevan identified the person in the photograph as the person who sold her the pills. Ryan received, field-tested and inventoried the pills. The pills were then submitted to the Illinois State Police Crime Lab for testing. On July 26, 2013, after Ryan received certain information from the crime lab, he went to 1539 South Yale and took defendant into custody. Ryan identified People's Exhibit No. 2 as the photograph he showed Teevan. Although there was information accompanying the photograph on the exhibit, that information was not shown to Teevan.

¶ 5 Outside the presence of the jury, the State asked that a certified copy of defendant's driving abstract be admitted into evidence because Teevan was shown defendant's driver's license photograph. The defense objected because defendant's address was never shown to Teevan; rather, she only saw the photograph. The trial court denied the State's motion to admit the driving abstract, but noted that People's Exhibit No. 2 was identified by Teevan and would be allowed into evidence "eventually."

¶ 6 The defense then argued that the exhibit had "a variety of hearsay information on that piece of paper: the address, the numbers, the name, everything else" and that Teevan testified that she only saw the photograph. Therefore, defense counsel planned to ask the court that the jury only be shown the photograph portion of the exhibit and that the other information be cut out. The trial court then noted that:

> "the photograph is the information, and all the information is his driver's license number, his name, his address, and that's all. All that's already been testified to: He walked out of the home, this is the address on here. That is going to stay into evidence over your objection."

The court further noted that the photograph was used as a "means of identification." Defense counsel responded that the address was hearsay and could be used as corroboration if there was an "issue about where this might have taken place." The court responded that Teevan identified defendant as walking "out of the home." The court also stated that there was a "danger" in sending the jury a plain photograph because the jury might infer that it was from a previous criminal case. The court stated that in this case the jury would know that defendant had a driver's license and the fact that he had a driver's license was not prejudicial.

¶ 7 Forensic scientist Paula Szum then testified that the eight pills weighed 1.1 grams and tested positive for the presence of 3,4-methylenedioxy-methamphetamine (3,4-MDMA), also known as Ecstasy.

¶ 8 At the close of the State's case, the State moved to admit its exhibits into evidence. In admitting the exhibits into evidence, the court noted the defense's objection to People's Exhibit No. 2 for the record.

¶ 9 The jury found defendant guilty of the delivery of a controlled substance. The trial court denied the motion for a new trial. At sentencing, the trial court noted that it had a copy of a letter from "WestCare," a drug treatment program in the Cook County Jail. Defense counsel then gave the court a letter from defendant's physician regarding defendant's "current condition,"

defendant's medication, and how that medication could affect his behavior when mixed with alcohol. Counsel also gave the court letters from defendant's parents and employer.

¶ 10 The State then presented the testimony of Illinois State Police Trooper Dudek, who stopped defendant for speeding on February 8, 2014. He subsequently took defendant into custody for driving under the influence of alcohol. As Dudek transported defendant in a squad car, defendant began to spit, curse, and kick. Defendant ultimately broke the windows of the squad car. During cross-examination, Dudek acknowledged that defendant indicated that he took medication for anxiety.

¶ 11 The State then argued in aggravation that "at a very young age" defendant had already been found guilty of three felonies, and that defendant was eligible for an extended-term sentence based upon his criminal background. The State concluded by noting that the events related by Dudek occurred while defendant was on bond in the instant case.

¶ 12 The defense responded that defendant was "only 21 years old," and was still maturing and growing up. Defense counsel first argued that defendant had a substance abuse problem as well as "personal issues," that is, the loss of a cousin, the attempted suicide of his sister and the divorce of his parents. Counsel did not "make excuses" for defendant kicking out the window of the trooper's car, but argued that defendant's diagnosis of "panic disorder with agoraphobia" made it clear that defendant panicked and did a "stupid thing." Counsel asked the court to "seriously consider" the length of defendant's sentence because confinement in a prison cell would exacerbate defendant's medical condition. Defense counsel next noted defendant's supportive family, that defendant worked with his father "around the clock" while on bond and

that a job was waiting for defendant. Counsel concluded that defendant was "still young and impressionable," and asked for a minimum sentence.

¶ 13 Defendant then admitted that he had his "share of difficulties in the past," but wanted to continue with treatment for alcohol and substance abuse. He told the court that he would not allow his "old actions or consequences" to follow him as he progressed and that although he could not change his past, he wanted to "take a stand" to change his life for the better.

¶ 14 In sentencing defendant, the trial court stated that it had considered all evidence in aggravation and mitigation including "the WestCare report," the letters from defendant's parents, and defendant's employment history. The court noted that defendant was young, and, therefore, although he was eligible for an extended-term sentence due to his criminal history, the court declined to impose an extended-term sentence. The court noted in aggravation that defendant had "an extensive criminal background for someone who is 21," that defendant had multiple felony convictions and that the instant case involved a hand-to-hand transaction with an undercover police officer. The court sentenced defendant to seven years in prison.

¶ 15 In denying defendant's motion to reconsider sentence, the court stated that it found the information about defendant's medical condition compelling and that defendant's panic disorder was "probably" one of the reasons that he kicked out the squad car windows. The court noted that defendant was eligible for an extended-term sentence, but it had not imposed an extended-term sentence because it had considered, in mitigation, his medical condition. The court then stated that it had considered, in aggravation, defendant's prior criminal history and the fact that he "committed another crime while out on bond." The court then reiterated that its consideration

of defendant's illness was why it had not imposed an extended-term sentence, which the court "was seriously considering based upon his criminal conduct in such a short period of time."

¶ 16 On appeal, defendant first contends that the trial court erred when it overruled the defense's objections to People's Exhibit No. 2 because the exhibit, which consisted of both defendant's driver's license photograph and additional indentifying information, contained inadmissible hearsay information, that is, the identifying information including his address. Defendant further argues that because "the officers' claim that [defendant] was the seller was uncorroborated," the additional identifying information improperly bolstered the State's case as to the central issue at trial, *i.e.*, the identity of the person who sold the Ecstasy.

¶ 17 The State responds that additional information was not offered for the truth of the matter asserted; rather, the information was offered "for the limited purpose of explaining how defendant's identity was confirmed and how he was subsequently arrested." The State argues, in the alternative, that even if the additional information was inadmissible hearsay, the introduction of this evidence was harmless because it did not affect the outcome of defendant's trial.

¶ 18 Evidentiary rulings are within the sound discretion of the trial court and will not be reversed absent an abuse of that discretion. *People v. Caffey*, 205 Ill. 2d 52, 89 (2001). An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. *People v. Patrick*, 233 Ill. 2d 62, 68 (2009).

¶ 19 Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. *Caffey*, 205 Ill. 2d at 88. Generally, hearsay evidence is inadmissible. Ill. R. Evid. 802 (eff. Jan. 1, 2011). An exception to the rule permits police officers to "testify to information they

received during the course of an investigation to explain why they arrested a defendant or took other action." See *People v. Jovan A.*, 2014 IL App (1st) 103835, ¶ 23.

¶ 20 Here, the State argues that the additional information on the exhibit was admissible under the exception to the hearsay rule which permits police officers to testify regarding information received during an investigation to explain why they arrested a defendant. However, the record does not support this argument. Here, Teevan and Ryan testified consistently that Teevan was only shown the driver's license photograph. In other words, the record reflects that the identifying information was not used in the police investigation; rather, only the driver's license photograph was utilized. Although the State's argument that the additional indentifying information was admissible under the course of the police investigation exception must fail, we agree with the State's conclusion that the admission of the additional indentifying information did not affect the outcome of defendant's trial.

¶ 21 Even when hearsay evidence is admitted in error, however, that error is subject to harmless error analysis. See *People v. Shorty,* 408 Ill. App. 3d 504, 512 (2001) ("The admission of hearsay evidence is harmless error where there is no reasonable probability that the jury would have acquitted defendant absent the hearsay testimony."). An error does not require reversal under the rule against hearsay if that error was harmless beyond a reasonable doubt. *People v. Stechly*, 225 Ill. 2d 246, 304 (2007). "The test is whether it appears beyond a reasonable doubt that the error at issue did not contribute to the verdict obtained." *Id.* " 'When determining whether an error is harmless, a reviewing court may, '(1) focus on the error to determine whether it might have contributed to the conviction; (2) examine the other properly admitted evidence to determine whether it overwhelmingly supports the conviction; or (3) determine whether the

improperly admitted evidence is merely cumulative or duplicates properly admitted evidence.' " *In re Brandon P.*, 2014 IL 116653, ¶ 50 (quoting *In re Rolandis G.*, 232 Ill. 2d 13, 43 (2008)).

¶ 22 In the case at bar, the admission of the additional identifying information was harmless because there is no reasonable probability that the verdict would have been different absent this information. Here, defendant was identified by two witnesses at trial. Specifically, Teevan testified that defendant exited the front door of 1539 South Yale, walked to the side of her car and exchanged a bag containing suspected Ecstasy for $140. Similarly, Ryan testified that he observed defendant exit 1539 South Yale, approach Teevan's vehicle and engage in a hand-to-hand transaction. Although defendant argues that these identifications were "uncorroborated," a single witness's testimony can sustain a conviction. See *People v. Siguenza-Brito,* 235 Ill. 2d 213, 228 (2009) (the testimony of one witness, if credible and positive is sufficient to convict, even if contradicted by the defendant). Considering that two witnesses identified defendant as the person who engaged in the hand-to-hand transaction, we are unpersuaded by defendant's argument that the additional identifying information contributed to the jury's verdict; rather, it was more likely that the jury relied on the properly admitted evidence, *i.e.*, the witnesses' testimony. See *Brandon P*., 2014 IL 116653, ¶ 50 (in determining whether an error is harmless, a reviewing court may, *inter alia,* focus on the error to determine whether it might have contributed to the conviction or examine the other properly admitted evidence to determine whether it overwhelmingly supports the conviction). Accordingly, because any error in admitting the additional identifying information did not contribute to defendant's conviction, the error was harmless.

¶ 23 Defendant next contends that the trial court erred when it imposed a seven-year prison term "despite substantial mitigation" and failed to detail its reasoning for the "harsh sentence." Defendant argues that the best way to rehabilitate him is to ensure he receives treatment, and, therefore, asks this court to reduce his sentence to five years in prison.

¶ 24 A sentence within statutory limits is reviewed on an abuse of discretion standard, so that this court may alter a sentence only 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 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.

¶ 25 When balancing the retributive and rehabilitative aspects of a sentence, a court must consider all factors in aggravation and mitigation including, *inter alia*, a defendant's age, criminal history, character, education, and environment, as well as the nature and circumstances of the crime and the defendant's actions in the commission of that crime. *People v. Raymond*, 404 Ill. App. 3d 1028, 1069 (2010). The court does not need to expressly outline its reasoning when crafting a sentence, and we presume that the court considered all mitigating factors absent some affirmative indication to the contrary other than the sentence itself. *Jones*, 2014 IL App (1st) 120927, ¶ 55. Because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the severity of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *Id*.

¶ 26 In the case at bar, defendant was found guilty of the Class 2 offense of the delivery of a controlled substance. The applicable sentencing range was between three and seven years in prison. See 730 ILCS 5/5-4.5-35(a) (West 2012). Based upon his criminal background, defendant was eligible for an extended-term sentence of between 7 and 14 years in prison. *Id.*

¶ 27 The record reveals that at sentencing, the parties presentenced evidence in aggravation and mitigation, including defendant's criminal background, his arrest while on bond in the current case, his family and employment history, and certain medical information. In sentencing defendant to seven years in prison, the trial court stated that defendant had multiple prior felony convictions, but in consideration of his youth and employment history and after reviewing the letters from defendant's parents and doctor, the court declined to impose an extended-term sentence. Based on our review of the record, this court cannot say that a prison term of seven years in prison was an abuse of discretion. See *Snyder*, 2011 IL 111382, ¶ 36.

¶ 28 Defendant, however, contends that the trial court failed to consider "substantial" mitigating evidence and failed to "detail the reasons" for the sentence. It is presumed however, that the court properly considered the mitigating factors presented and it is the defendant's burden to show otherwise. *People v. Brazziel*, 406 Ill. App. 3d 412, 434 (2010). Here, defendant cannot meet that burden, as the trial court specially stated that it considered, in mitigation, the WestCare report, the letters from defendant's parents, defendant's youth and his employment history. The trial court also stated that it was not sentencing defendant to an extended-term sentence. Additionally, when denying defendant's motion to reconsider sentence, the trial court stated that it had considered, in mitigation, that defendant suffered from a panic disorder. The court further explained that it had not sentenced defendant to an extended-term sentence, which

the court was "seriously considering," because of defendant's illness. We reject defendant's conclusion that the trial court abused its discretion merely by giving the evidence presented in mitigation a different weight than defendant would prefer, the court was not required to impose a minimum sentence merely because mitigation evidence existed (*Jones*, 2014 IL App (1st) 120927, ¶ 55).

¶ 29 Defendant finally challenges the imposition of the $250 DNA analysis fee. Although defendant has forfeited review of this claim because he did not challenge the fines and fees order in a postsentencing motion (see *People v. Enoch*, 122 Ill. 2d 176, 186 (1988)), he argues that "a sentence that does not conform to statutory requirements may be challenged at any time." In light of *People v. Castleberry*, 2015 IL 116916, ¶ 19, this rule no longer applies. On appeal, however, a reviewing court may modify the fines and fees order without remanding the case back to the circuit court. See Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999); *People v. Rivera*, 378 Ill. App. 3d 896, 900 (2008). Because the State does not argue forfeiture on appeal, the State has forfeited the claim that the issue raised by defendant is forfeited. See *People v. Whitfield*, 228 Ill. 2d 502, 509 (2007) (the State may forfeit a claim that issue the defendant raises is forfeited if the State does not argue forfeiture on appeal). We review the imposition of fines and fees *de novo*. *People v. Price*, 375 Ill. App. 3d 684, 697 (2007).

¶ 30 Defendant contends that the $250 DNA analysis fee must be vacated because he was previously convicted of a felony and has already submitted a DNA sample. Based on our supreme court's decision in *People v. Marshall*, 242 Ill. 2d 285, 303 (2011), the State agrees that a DNA analysis fee is authorized only where the defendant is not currently registered in the DNA database. We therefore vacate the $250 DNA assessment.

¶ 31 Accordingly, pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order the clerk of the circuit court to correct defendant's fines and fees order to reflect the vacation of the $250 DNA assessment. We affirm the judgment of the circuit court of Cook County in all other aspects.

¶ 32 Affirmed; fines and fees order corrected.