SIXTH DIVISION
February 24, 2017

No. 1-14-3480

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 19277
	)	
GREGORY DIXON,	)	Honorable
	)	Jorge Luis Alonso,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed defendant's convictions and sentences for narcotics-related offenses where the State proved him guilty beyond a reasonable doubt, the trial court committed no abuse of discretion in the admission of nonhearsay evidence, the State made no remarks during opening statement and closing arguments necessitating reversal, and the trial court did not abuse its discretion when sentencing him.

¶ 2 A jury convicted defendant, Gregory Dixon, of the enhanced offenses of delivery of less than one gram of a substance containing cocaine within 1000 feet of a school, and possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine within 1000 feet of a school. The trial court sentenced defendant to two concurrent terms of 11 years' imprisonment. On appeal, defendant contends: (1) his convictions should be reduced to the unenhanced versions and remanded for resentencing because the State failed to prove that the

building within 1000 feet of where the offenses took place was operating as a school on the date of the offenses; (2) the trial court erroneously admitted hearsay evidence; (3) the State made improper remarks during opening statement and closing arguments; and (4) the trial court abused its discretion during sentencing. We affirm.

¶ 3 At trial, Officer Rolando Ruiz testified that at approximately 4:30 p.m. on September 11, 2013, he and other officers were conducting a drug surveillance operation in the vicinity of 5154 West Maypole Avenue in Chicago, which was known for the sale of illegal narcotics. Officer Ruiz had previously made about 100 narcotics-related arrests near that location.

¶ 4 Officer Ruiz was in plain clothes and on foot about 40 to 60 feet away from 5154 West Maypole Avenue. Officer Ruiz was in radio contact with the enforcement officers, who would make the arrest once Officer Ruiz observed an illegal narcotics transaction.

¶ 5 Officer Ruiz saw various people "hanging out, loitering in the area." He observed a man named Sanders Williamson standing four or five feet away from defendant on the sidewalk. Mr. Williamson was yelling "rocks and weed," which Officer Ruiz knew to mean that he was soliciting the sale of crack cocaine ("rocks") and cannabis ("weed"). About five minutes later, Officer Ruiz observed a man named Excell Hampton approach defendant on the sidewalk and engage in a brief conversation; the officer could not hear what they talked about. Defendant then relocated to the doorway of a six-unit residential building at 5154 West Maypole Avenue. Defendant leaned into the doorway, and retrieved an item from the left side of the doorway; the officer could not see what the item was at that point. Defendant returned to Mr. Hampton, and tendered him the item in exchange for cash.

¶ 6 Officer Ruiz believed he had just observed a narcotics transaction because the conduct of defendant and Mr. Hampton was similar to previous narcotics transactions he had observed in

the area. Officer Ruiz radioed the enforcement officers and gave them a description of Mr. Hampton and the direction in which he was walking. A few seconds later, Officer Ruiz received word that Officer Duran had detained Mr. Hampton and recovered narcotics from him. Officer Ruiz then radioed additional enforcement officers to detain defendant.

¶ 7 Officer Ruiz observed Officers Berka and Bracamontes detain defendant, after which Officer Ruiz directed Officer Berka to the doorway at 5154 West Maypole Avenue. Officer Berka went to the doorway and radioed that he had recovered eight ziplock bags, each containing suspect cocaine.

¶ 8 Officer Juan Duran testified that at about 4:30 p.m. on September 11, 2013, he was one of the enforcement officers. He was assigned to a vehicle with two other officers, about a block and a half from Officer Ruiz. Officer Ruiz radioed that he had observed a suspected narcotics transaction, and he gave a description of the buyer, Mr. Hampton, and the direction in which he was walking.

¶ 9 Officer Duran detained Mr. Hampton at 315 North Laramie Avenue, about a block and a half north of Maypole and Laramie Avenues. As the officer approached Mr. Hampton, he saw Mr. Hampton "cup" something in his right hand and place it into his pants pocket. Officer Duran retrieved this item, which was a small ziplock bag, containing suspect crack cocaine. The front of the bag had a yellow face with a black Batman logo. Officer Duran brought the bag of suspect crack cocaine to the police station, where it was properly inventoried.

¶ 10 Officer Everardo Bracamontes testified that on September 11, 2013, he was one of the enforcement officers in an unmarked vehicle with Officers Jones, Berka and Pellerano. Officer Ruiz radioed that he had witnessed a narcotics transaction, gave a description of defendant and Mr. Williamson, and told the officers to detain them. Officer Bracamontes exited his vehicle and

detained defendant and Mr. Williamson. Officer Bracamontes recovered eight bags of cannabis from defendant's pants pocket. The cannabis was properly inventoried.

¶ 11 Officer Berka testified he recovered a rolled up piece of paper containing eight ziplock bags of suspect crack cocaine in the doorway at 5154 West Maypole Avenue. Each bag had a Batman logo on it. The bags were taken to the police station and properly inventoried.

¶ 12 At the police station, Officer Bracamontes gave defendant his *Miranda* warnings, after which defendant asked Officer Berka if he could be charged with possession rather than delivery of a controlled substance. Officer Berka also heard defendant ask Mr. Hampton, who was also at the police station, whether he had "told on him."

¶ 13 Kristine Dillow Benak, a forensic scientist with the Illinois State Police and an expert in the field of drug chemistry, testified she tested 0.1 grams of the substance recovered from Mr. Hampton and found that it was cocaine. Ms. Benak tested 2.9 grams of the substance recovered from defendant and found that it was cannabis. Ms. Benak tested 1.3 grams of the substance found in the eight ziplock bags in the doorway at 5154 West Maypole Avenue, and found that it was cocaine.

¶ 14 The parties stipulated that Oscar Brown, an investigator employed by the office of the Cook County State's Attorney, would testify that "he measured the distance from 5154 West Maypole Avenue in Chicago, location of the offense, to Spencer Elementary School located at 213 North Lavergne in Chicago, Illinois [and that] the distance between the location of the offense and Spencer Elementary School is 764 feet."

¶ 15 The State rested.

¶ 16 Defendant called Mr. Hampton, who testified that he bought crack cocaine on September 11, 2013, from a person whose name he did not know. Mr. Hampton did not purchase the

cocaine from defendant, and he did not see defendant selling drugs to anyone that day. Mr. Hampton denied that defendant asked him at the police station whether he had "told" on defendant.

¶ 17 Following closing arguments, the jury convicted defendant of delivery of less than one gram of a substance containing cocaine, and possession with intent to deliver one gram or more, but less than 15 grams of a substance containing cocaine, within 1,000 feet of a school.

¶ 18 At the sentencing hearing, defendant's mother, Sarah Dixon, testified that she had raised him alone because his father had been murdered when defendant was about four years old. After his father's death, defendant suffered from attention deficit disorder and bipolar disorder. Defendant has been prescribed medication and was hospitalized three times for treatment of his mental illness.

¶ 19 Ms. Dixon testified that defendant has no history of violence and has a close relationship with his three siblings. Defendant's incarceration would affect Ms. Dixon because he is the person who reminds her to take her various medications. Ms. Dixon asked the trial court to take into consideration that defendant needed rehabilitation and medical attention more than punishment and incarceration.

¶ 20 Defendant gave a statement in allocution, acknowledging that he had made some mistakes in the past, but that he was innocent of the crimes charged as he did not sell Mr. Hampton any drugs. He stated that he was "on the right path," "growing [and] progressing," and he asked for the minimum sentence so he could return to his family.

¶ 21 In aggravation, the prosecutor informed the court that defendant had four prior felony convictions for narcotics-related offenses and has now "elevated his game to be peddling poison

out near a school." The prosecutor asked that defendant be sentenced to between 10 and 15 years' imprisonment.

¶ 22 In mitigation, defense counsel noted that defendant is young (24 years old at the time of sentencing), with no history of violence, and that he has a strong family connection and is not beyond rehabilitation.

¶ 23 The trial court stated that it had considered the presentence investigation report, the factors in aggravation and mitigation, the evidence at trial, and the financial impact of incarceration, and sentenced defendant to two concurrent terms of 11 years' imprisonment. Defendant appeals.

¶ 24 First, defendant contends the State failed to prove beyond a reasonable doubt that he was guilty of the enhanced offenses of delivery and possession with intent to deliver cocaine within 1,000 feet of a school on September 11, 2013, because it provided no evidence that the building near where the offenses took place at 5154 West Maypole Avenue was operating as a school on that date. Defendant argues we should reduce his convictions to the unenhanced versions and remand for resentencing.

¶ 25 When reviewing a challenge to the sufficiency of the evidence, the reviewing court must determine, after viewing the evidence in the light most favorable to the State, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Anderson*, 2017 IL App (1st) 122640, ¶ 38.

¶ 26 Defendant was convicted under section 401(c)(2) of the Illinois Controlled Substances Act (Act) (720 ILCS 570/401(c)(2) (West 2012)), for possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine. Defendant was convicted under section 401(d) of the Act (720 ILCS 570/401(d) (West 2012)), for delivery of less than one

gram of a substance containing cocaine. As the jury also found that these offenses occurred within 1000 feet of a school: section 407(b)(1) of the Act (720 ILCS 570/407(b)(1) (West 2012)), enhanced defendant's conviction of possession with intent to deliver from a Class 1 felony to a Class X felony; and section 407(b)(2) of the Act (720 ILCS 570/407(b)(2) (West 2012)), enhanced defendant's delivery conviction from a Class 2 felony to a Class 1 felony.

¶ 27 Section 407(b) of the Act does not define "school," but this court has held that the term applies to "any public or private elementary or secondary school, community college, college or university." *People v. Goldstein*, 204 Ill. App. 3d 1041, 1048 (1990). Defendant argues that the State failed to prove that the building within 1,000 feet of 5154 West Maypole Avenue was used as a school at the time of the offenses on September 11, 2013.

¶ 28 Defendant's contention is without merit, because the parties stipulated at trial that Inspector Brown would testify that the building at issue was the "*Spencer Elementary School*," which was located 764 feet from 5154 West Maypole Avenue. "A stipulation is an agreement between parties or their attorneys with respect to an issue before the court, and courts look with favor upon stipulations because they tend to promote disposition of cases, simplification of issues, and the saving of expense to litigants. The primary rule in the construction of stipulations is that the court must ascertain and give effect to the intent of the parties. A stipulation is conclusive as to all matters necessarily included in it, and no proof of stipulated facts is necessary, since the stipulation is substituted for proof and dispenses with the need for evidence. Generally speaking, a defendant is precluded from attacking or otherwise contradicting any facts to which he or she stipulated." (Internal quotation marks and citations omitted). *People v. Woods*, 214 Ill. 2d 455, 468-69 (2005).

¶ 29 Defendant argues that the parties only stipulated that on *some unspecified date*, Inspector Brown measured the distance between 5154 West Maypole Avenue and Spencer Elementary School and found that it was 764 feet; defendant contends this stipulation was insufficient to establish that the Spencer Elementary School was in existence on the date of the offenses, September 11, 2013 and, therefore, he should not have been convicted and sentenced under section 407(b) of the Act for committing the enhanced drug offenses within 1,000 feet of a school.

¶ 30 As discussed, the primary rule in the construction of stipulations is that the court must ascertain and give effect to the intent of the parties. *Id*. The intent of the parties can be determined here from an examination of the parties' opening statements and closing arguments. During the prosecution's opening statement, the prosecutor stated: "You are *** going to hear the stipulation as to the fact that these [narcotics] transactions *** occurred within a thousand feet of a school." During defendant's opening statement, he did not refute that the stipulation would establish that the drug offenses committed on September 11, 2013, occurred within 1000 feet of a school. Rather, defendant stated in pertinent part: "Ladies and gentlemen, we are in agreement that Excell Hampton bought drugs, but he did not buy those drugs from [defendant]. This case is about misidentification. The Chicago police misidentified the person who sold the drugs to Excell Hampton."

¶ 31 During the prosecution's closing arguments, the prosecutor stated:

> "That the delivery took place on a public way within [1,000] feet of the real property comprising a school, Spencer Elementary School, 764 feet. How do you know that? That was the stipulation that you heard at the end of the State's case. That Spencer Elementary School was 764 feet away from where this delivery took place. That

> proposition has been stipulated to. You don't have to consider it because the parties agree that this took place within a thousand feet of the school."

¶ 32 During defendant's closing arguments, he again did not refute that the stipulation established that the drug offenses committed on September 11, 2013, occurred within 1,000 feet of Spencer Elementary School. Rather, defendant argued:

> "We agree that Excell Hampton bought drugs on September 11, 2013. We agree that officers detained him and found some drugs with a Batman logo on there. We also agree that the police searched that doorway at 5154 West Maypole and found more drugs with Batman logos. We agree that these drugs were taken to the Illinois State Police Crime Lab. They were tested with the GMS machine and they came back positive. We agree on so many things except for *one thing*. They got the wrong guy. There's only *one* dispute here and that's the dispute where the State is falsely claiming that [defendant] was the drug dealer that day." (Emphasis added.)

¶ 33 The parties' respective opening statements and closing arguments establish that there was no dispute that drug offenses occurred on September 11, 2013, at 5154 West Maypole Avenue, nor was there any dispute that the stipulation established that those drug offenses committed on September 11, 2013, occurred within 1,000 feet of the Spencer Elementary School; rather, the only dispute was whether defendant was misidentified by the police as the person who had committed those offenses. As the parties clearly intended for the stipulation to establish that the drug offenses committed on September 11, 2013, occurred within 1,000 feet of the Spencer Elementary School, defendant cannot argue for the first time on appeal that the State failed to establish that the Spencer Elementary School was in existence on that date. *Id*. Accordingly, defendant's sufficiency of the evidence argument fails.

¶ 34 This case is similar to *People v. Toliver*, 2016 IL App (1st) 141064. In *Toliver*, the appellate court held that by stipulating that the distance between the defendant's drug activity and Lathrop Elementary School was 967 feet, and by conceding during closing arguments that from where the defendant was arrested the school is less than 1000 feet away, the defendant demonstrated his intent to eliminate that issue from the case and focus instead on the argument that he was doing nothing illegal while in close proximity to the school. *Id*. ¶ 31. The appellate court held that the defendant had forfeited his right to challenge that part of the State's case, which he conceded in the trial court. *Id*. As in *Toliver*, defendant here demonstrated his intent, by stipulation and by his opening statement and closing arguments, that he intended (along with the State) to eliminate the issue of the location of the Spencer Elementary School on the date of his drug offenses, and to instead focus on his argument that he had been misidentified by police. Accordingly, defendant forfeited his right to argue on appeal that the State had failed to prove that his drug offenses on September 11, 2013, occurred within 1,000 feet of the Spencer Elementary School.

¶ 35 The cases cited by defendant, *People v. Boykin*, 2013 Il App (1st) 112696; *People v. Cadena*, 2013 IL App (2d) 120285; and *People v. Ortiz*, 2012 IL App (2d) 101261, in support of his argument that the State failed to prove him guilty of the enhanced drug offenses, are inapposite, as none of them involved stipulations that the drug offenses occurred within 1,000 feet of a school.

¶ 36 Next, defendant contends the trial court erroneously admitted hearsay evidence. Hearsay is defined as testimony of an out-of-court statement offered to establish the truth of the matter asserted therein, which rests for its value on the credibility of the out-of-court asserter. *People v. Evans*, 373 Ill. App. 3d 948, 964 (2007). A statement offered for a reason other than for the

truth of the matter asserted is generally admissible because it is not hearsay. *Id.* For example, a statement offered to prove its effect on the listener's state of mind, or to show why the listener acted the way he did, is not hearsay. *Id*.

¶ 37 We review the trial court's decision regarding the admission of the alleged hearsay for an abuse of discretion. *People v. Anderson*, 2017 IL App (1st) 122640, ¶ 50. The trial court's decision constitutes an abuse of discretion when its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court. *Id*. ¶ 51.

¶ 38 The complained-of testimony is that of Officer Ruiz, who testified he saw Mr. Williamson standing four or five feet away from defendant on the sidewalk yelling "rocks and weed," which the officer knew to mean that he was soliciting the sale of crack cocaine ("rocks") and cannabis ("weed"). The trial court admitted this testimony concerning Mr. Williamson's statement about "rocks and weed" only to show its effect on Officer Ruiz's state of mind and why he acted the way he did, *i.e*., why he focused his surveillance on defendant and Mr. Williamson as opposed to the other persons in the area. As such, the testimony was non-hearsay and the trial court committed no abuse of discretion in its admission.

¶ 39 Defendant argues, though, that Officer Ruiz never testified that Mr. Williamson's statement caused him to do anything differently than what he was already doing, which was performing a narcotics investigation in the area of Laramie and West Maypole Avenues. In effect, defendant's argument is that Mr. Williamson's statement about "rocks and weed" did not cause Officer Ruiz to focus his surveillance on them or otherwise affect his state of mind. Defendant argues that rather than showing its effect on Officer Ruiz's state of mind, Mr. Williamson's statement was offered to prove the truth of the matter asserted, *i.e*., that Mr.

Williamson was soliciting drug sales for defendant, and that defendant was selling cocaine ("rocks") and cannabis ("weed").

¶ 40 Defendant's argument would have merit if Officer Ruiz had heard Mr. Williamson's statement about "rocks and weed" *after* having observed the suspected drug transaction between defendant and Mr. Hampton, because at that point Officer Ruiz would already have known (due to the suspected drug transaction) where to focus his surveillance and therefore Mr. Williamson's statement would have had no influence on him. However, review of Officer Ruiz's testimony shows that he saw Mr. Williamson standing near defendant and yelling "rocks and weed" *before* observing defendant's drug transaction with Mr. Hampton; under this circumstance, a reasonable person could take the view of the trial court that Officer Ruiz's decision to focus his surveillance on defendant and Mr. Williamson was influenced by Mr. Williamson's statement about "rocks and weed" made in the vicinity of defendant. Accordingly, Officer Ruiz's testimony regarding Mr. Williamson's statement was properly admitted to show its effect on the officer's state of mind and to show why he acted the way he did and therefore the trial court committed no abuse of discretion.

¶ 41 Next, defendant contends the State made an improper remark during its opening statement. The purpose of an opening statement is to apprise the trier of fact of what each party expects the evidence to prove. *People v. Kliner*, 185 Ill. 2d 81, 127 (1998). An opening statement may include a discussion of the expected evidence and the reasonable inferences from the evidence. *Id*. Reversible error only occurs when the complained-of comments in the prosecutor's opening statement are attributable to deliberate misconduct of the prosecutor and substantially prejudice defendant. *Id*. The prejudicial impact of remarks made during opening

statements is a matter left within the trial court's discretion and will not be overturned absent an abuse of discretion. *Ford v. Grizzle*, 398 Ill. App. 3d 639, 649 (2010).

¶ 42 The complained-of remark is as follows:

> "Many people when they wake up during a weekday they get ready for work, they make themselves some coffee, they have some breakfast, cold cereal, whatever, then they go to work. That's the routine that people do on a daily basis.
>
> Well, back on September 11, 2013, the defendant, Gregory Dixon, went to work as well, except that he didn't go into your 9-to-5 job. He went to the corner of Laramie and Maypole to sell drugs."

¶ 43 The prosecutor's comment was proper in that the evidence was expected to elicit, and in fact did elicit, that defendant went to Laramie and West Maypole Avenues to sell cocaine on September 11, 2013. Defendant argues that the prosecutor improperly indicated that he sold drugs "daily" where the prosecutor did not expect to present any evidence that defendant sold drugs outside of September 11, 2013 and, in fact, presented no such evidence. However, the prosecutor stated only that it was defendant's job, "on September 11, 2013," to go to the corner of Laramie and Maypole Avenues to sell drugs. The prosecutor made no statement that defendant sold drugs at any other time. We find no error.

¶ 44 Next, defendant contends the State made improper remarks during closing arguments. A prosecutor is allowed wide latitude during closing arguments and may comment on the evidence presented at trial and any reasonable inferences therefrom, even if the inferences reflect negatively on defendant. *People v. Willis*, 409 Ill. App. 3d 804, 812 (2011). The prosecutor may respond to arguments from defense counsel that clearly provoke a response. *People v. Hudson*, 157 Ill. 2d 401, 441 (1993). The closing argument must be viewed in its entirety, and the

challenged remarks must be viewed in their context. *People v. Nicholas*, 218 Ill. 2d 104, 122 (2005). Even if a prosecutor's closing arguments are improper, they do not constitute reversible error unless they result in substantial prejudice to defendant such that absent those remarks the verdict would have been different. *Hudson*, 157 Ill. 2d at 441.

¶ 45 The appropriate standard of review for closing arguments is currently uncertain. In *People v. Wheeler*, 226 Ill. 2d 92 (2007), our supreme court applied a *de novo* standard of review (*id*. at 121); however, in *People v. Blue*, 189 Ill. 2d 99 (2000), which *Wheeler* cited with approval, our supreme court applied an abuse of discretion standard (*id*. at 128). We need not resolve this conflict, as our holding is the same under either standard.

¶ 46 First, defendant contends the prosecutor improperly indicated that drug dealing was his daily job when she stated: "On September 11 of 2013 right around 4:30 in the afternoon the defendant was out doing his work, drug dealing, in the open air in the middle of the day, near a school that you heard about, Spencer Elementary School, on the public way."

¶ 47 Defendant forfeited review by failing to object to this comment. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Even choosing to address the issue on the merits, we note that, similar to the prosecutor's opening statement, she only stated that defendant was drug dealing at 4:30 p.m. on September 11, 2013; she did not state that he sold drugs on another date. We find no error.

¶ 48 Next, defendant contends the prosecutor misstated the evidence when she argued that defendant was found to have crack cocaine on his person. Later in her argument, though, the prosecutor corrected herself by telling the jury that "the defendant didn't have cocaine on his person." During rebuttal argument, the prosecutor again stated defendant "didn't have the cocaine on him." Given that the prosecutor twice corrected the earlier misstatement, we find no prejudicial error to defendant.

¶ 49 Next, defendant contends the prosecutor made an improper, inflammatory argument when he stated: "And let's take a look at these drugs that the defendant was out there selling that day just under 800 feet of a school. Why are there Batman logos on these narcotics? Who's the target demographic that he's selling these to?"

¶ 50 The prosecutor's implication that defendant was targeting his drug sales to children was a reasonable inference from the evidence at trial that he was selling his cocaine less than 800 feet from an elementary school and that the bags of cocaine had a logo of the Batman, a popular comic book and movie superhero, on them. We find no error.

¶ 51 Next, defendant contends the State improperly argued multiple times that the jury could consider Mr. Williamson's statement about "rocks and weed" as substantive evidence of defendant's guilt, when in fact the trial court had only admitted Mr. Williamson's statement for the limited purpose of showing its effect on Officer Ruiz, and *not* as substantive evidence.

¶ 52 Defendant forfeited review of some of these arguments by failing to object. *Id*. at 186. Even choosing to address the issue on the merits, we find no reversible error.

¶ 53 As discussed, the trial court ruled that Officer Ruiz could testify to Mr. Williamson's statement about "rocks and weed" to show its effect on Officer Ruiz's state of mind and why he focused his surveillance on defendant and Mr. Williamson. Pursuant thereto, Officer Ruiz testified that on September 11, 2013, he and some other officers were conducting a drug surveillance operation in the vicinity of 5154 West Maypole Avenue and he witnessed various people "hanging out, loitering in the area." Eventually, he focused his attention on Mr. Williamson and defendant because Mr. Williamson was standing four or five feet away from defendant yelling "rocks and weed," which the officer knew to mean that he was soliciting the

sale of crack cocaine and cannabis. Soon thereafter, the officer saw defendant engage in a narcotics transaction with Mr. Hampton.

¶ 54 During closing argument, the prosecutor stated:

> "When they first got there, Officer Ruiz told you that he was on foot and he was in plain clothes. He was doing his surveillance without a visual aid and he was about 40 to 60 feet away. The first thing that he observed, when he knows through his experience is someone soliciting business, someone trying to bring business to the location, someone doing a little bit of marketing for the defendant, rocks and weed. And the officer knows what rocks are, crack cocaine, and what weed is, cannabis. After he hears that person soliciting for the defendant he, in fact, sees a customer come up."

¶ 55 The prosecutor's comment accurately reflected Officer Ruiz's trial testimony regarding the effect Mr. Williamson's statement had on him, *i.e.*, that it focused his attention on defendant and Mr. Williamson. We find no error.

¶ 56 However, the prosecutor made two other statements during closing argument regarding Mr. Williamson that did constitute error.

¶ 57 First, the prosecutor stated:

> "And you can make the conclusion that because the defendant is out there, *because he has someone soliciting traffic*, because he is out there dealing drugs to Excell Hampton, that now that substances, that remaining inventory that he's kept in that doorway with the same logo is, stock that he is intending to sell later that day." (Emphasis added.)

¶ 58 The prosecutor here was not referring to how Mr. Williamson's statement regarding "rocks and weed" affected Officer Ruiz's state of mind when deciding where to focus his surveillance; rather, the prosecutor was improperly arguing for the substantive use of Mr.

Williamson's statement as evidence that defendant was "intending to sell [cocaine] later that day."

¶ 59 Second, during rebuttal argument, in response to defendant's argument that he was not found in possession of crack cocaine, the prosecutor stated:

> "And, yeah, he didn't have the cocaine on him. So what, he didn't have the cocaine on him. He kept it in his stash. And their only witness said that's pretty much the way it goes. But he did have the marijuana on him. *Rocks weed, rocks weed*. Eight bags of cocaine, eight bags of marijuana." (Emphasis added.)

¶ 60 This rebuttal argument was error, as the trial court only admitted Mr. Williamson's statement for the limited purpose of showing its effect on Officer Ruiz's state of mind and specifically stated: "The State cannot argue it for some other reason. They can't argue to the jury later, lo and behold, rocks and weed are found." However, contrary to the court's express *in limine* ruling, the State here argued that rocks and weed, *i.e*., eight bags of cocaine and eight bags of marijuana, were found.

¶ 61 Having found that two of the State's comments were error, we next consider whether they resulted in substantial prejudice to defendant such that absent those remarks the verdict would have been different. *Hudson*, 157 Ill. 2d at 441. We find no such substantial prejudice given all the following evidence against defendant: Officer Ruiz's testimony as to his observation of the narcotics transaction between defendant and Mr. Hampton in which defendant retrieved an item from the doorway at 5154 West Maypole Avenue and sold it to Mr. Hampton, which was similar to other narcotics transactions the officer had observed; the recovery of a bag of suspect cocaine from Mr. Hampton's person with a Batman logo on it; the recovery of eight bags of suspect cocaine with Batman logos on them from the doorway at 5154 West Maypole

Avenue; defendant's inquiry to Officer Berka at the police station as to whether he could be charged with possession rather than delivery of a controlled substance; defendant's inquiry of Mr. Hampton at the police station as to whether he had "told" on him; and the evidence that the bag recovered from Mr. Hampton and the bags recovered from the doorway at 5154 West Maypole Avenue tested positive for cocaine.

¶ 62 Defendant contends the "cumulative effect" of the various errors requires that he be granted a new trial. We disagree. There is no reversible error on any individual issue and no cumulative error. See *People v. Moore*, 358 Ill. App. 3d 683, 695 (2005) ("Where the alleged errors do not amount to reversible error on any individual issue, there generally is no cumulative error.").

¶ 63 Finally, defendant contends the trial court abused its discretion during sentencing where it failed to give appropriate consideration to his young age, the non-violent nature of the offenses, the small quantity of drugs involved, his close family ties, his prior work history, his lack of gang involvement, his need for mental health and drug treatment, and the financial impact of his incarceration.

¶ 64 "A trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference. That is because the trial judge, having observed the defendant and the proceedings, is in a much better position to consider factors such as the defendant's credibility, demeanor, moral character, mentality, environment, habits, and age than the reviewing court, which must rely on the cold record on appeal. Where the sentence chosen by the trial court is within the statutory range permissible for the pertinent criminal offense for which the defendant has been tried and charged, a reviewing court may only disturb the sentence if the trial court abused its discretion in the sentence it imposed. An abuse of discretion will only

be found where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. Where mitigating evidence is presented to the trial court, it is presumed, absent some indication other than the sentence itself to the contrary, that the court considered it. When determining the propriety of a particular sentence, we cannot substitute our judgment for that of the trial court simply because we would weigh the sentencing factors differently." (Internal citations and quotation marks omitted). *People v. Cole*, 2016 IL App (1st) 141664, ¶ 55.

¶ 65 Defendant's conviction of the enhanced offense of possession with intent to deliver one gram or more but less than 15 grams of a substance containing cocaine within 1000 feet of a school was a Class X felony with a sentencing range of 6 to 30 years' imprisonment. See 730 ILCS 5/5-4.5-25(a) (West 2012). Defendant's conviction of the enhanced offense of delivery of less than one gram of a substance containing cocaine within 1000 feet of a school was a Class 1 felony with a sentencing range of 4 to15 years' imprisonment. See 730 ILCS 5/5-4.5-30(a) (West 2012). At the sentencing hearing, the State argued in aggravation that defendant had four prior felony convictions for narcotics-related offenses and was now peddling drugs near a school and asked for a 10 to 15 year prison sentence. Defendant argued in mitigation that he had no history of violence, has a strong family connection, and that he is young and can be rehabilitated. Defendant's mother testified to his history of mental illness after his father's murder and his close relationship with his family. The trial court then stated for the record that it had read the presentence investigative report, considered the evidence at trial and the aggravating and mitigating factors, and also considered the financial impact of incarceration and determined that concurrent 11-year sentences were fair. Defendant's concurrent 11-year sentences are presumed proper as they are within the respective statutory ranges. *People v. Ramos*, 353 Ill. App. 3d 133,

137 (2004). Further, we do not find the sentences greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense. Defendant has a criminal history that includes four felony convictions for narcotics-related offenses, and a "defendant's criminal history alone" may "warrant sentences substantially above the minimum." *People v. Evangelista*, 393 Ill. App. 3d 395, 399 (2009). We find no abuse of discretion.

¶ 66 For the foregoing reasons, we affirm the circuit court.

¶ 67 Affirmed.