2017 IL App (1st) 143629

THIRD DIVISION
August 9, 2017

No. 1-14-3629

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
	)	Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 11 CR 16147
	)	
ALEXANDER VESEY,	)	
	)	
Defendant-Appellant.	)	The Honorable
	)	Nicholas R. Ford,
	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved beyond a reasonable doubt that defendant used a firearm when he committed the present armed robbery, the trial court did not err in admitting other-crimes evidence based on identity and *modus operandi*, and the prosecutor did not issue an unduly inflammatory or prejudicial closing argument. Defendant's constitutional challenge to the Habitual Criminal Act also failed. This court affirmed the judgment of the circuit court.

¶ 2 Following a jury trial, defendant Alexander Vesey was found guilty of armed robbery with a firearm and sentenced to life in prison as a habitual criminal due to his previous Class X convictions. Defendant appeals arguing the State failed to prove beyond a reasonable doubt that

he used a firearm during the commission of the offense, the trial court erred in admitting other-crimes evidence, and he was denied his right to a fair trial because the State's closing argument was unduly prejudicial and inflammatory. He finally raises an as-applied constitutional challenge to being sentenced as a habitual criminal to life without parole when there was no physical harm during the armed robbery.

¶ 2 Defendant was charged after he and his codefendant Marcus Washington[1] allegedly committed a series of armed robberies on the north and west sides of Chicago in 2011 using various Enterprise rental cars as getaway vehicles. The present armed robbery conviction related to Farhan Hasan, who testified that on August 31, 2011, he had just dropped off his wife and two children at their house, 7311 West Montrose in Norridge, and proceeded through the alley to his garage when he noticed a silver Nissan Altima in his rearview mirror. After parking in his garage, Hasan stepped into the alley, then saw two black men, ages 35-40, almost sprinting towards him from about four houses away. One man, later identified as defendant, was taller and thinner with a goatee, short, dreadlocked hair, and bloodshot red eyes. Hasan described defendant as 5'10", although defendant was actually 6'3". The other man was shorter and stockier. With defendant about a foot away and believing he might need directions, Hasan offered help. Defendant then stated, "do you know what the fuck this is" as he brandished in his right hand a small, champagne-gold colored gun with a barrel sticking out about two or three inches from his palm. Defendant ordered Hasan into the garage corner facing the wall and stated "stay in the corner otherwise I'll shoot." Hasan recognized the weapon as a gun because he had seen Chicago Park District police officers with guns before when he worked there. Defendant emptied Hasan's pockets, threatening to shoot if Hasan did not otherwise remain in the corner.

[1] Defendant and Washington were charged under the same indictment, but defendant's case was severed from Washington's.

Over the course of 10 to 15 minutes, the two offenders took Hasan's wallet, keys, GPS, Movado wristwatch, and two laptops. They also took items from Hasan's vehicle, and then fled in a silver Nissan Altima. Hasan called the police and provided what he believed was the license plate number, N280083.

¶ 2 On cross-examination, Hasan acknowledged his initial description of defendant to police was different, insofar as he said defendant had short, afro-style, unkempt hair. Hasan also initially told police that defendant had "bad teeth," meaning they were "a little dirty." He acknowledged he did not know the difference between a revolver and semiautomatic, but he knew the weapon was a gun.

¶ 2 Over defendant's objection, the State successfully moved to admit other-crimes evidence at defendant's trial based on identity and *modus operandi*. Although the State asserted it would present evidence of five other armed robberies at trial, it presented only two. Several witnesses testified as to armed robberies similarly occurring in garage alleyways between August 21 and September 8, 2011. First, Robert Hawkins testified that on August 21, he looked out his kitchen window and noticed an individual in his alley peering into neighbors' yards, including his own at 2215 West Polk Street in Chicago. Some minutes later, Hawkins stepped into the alley from his garage and saw this same person walking towards him. When Hawkins asked to help, the individual, who was about 6 feet tall and 180 lbs., pulled out a gun pointing it at Hawkins, then backed Hawkins into the garage with the gun to his head and demanded that Hawkins empty his pockets. Hawkins handed him some $200 at which point the robber, motioning towards the alley, waved two other men into the garage. One of them was defendant who had short cornrows in his hair. Defendant patted down Hawkins, further emptying his pockets of his phone and

keys, and his wallet was taken too. Hawkins clearly saw defendant's face. The robbers then left in a silver car.

¶ 2 Next, Renadu Catoc testified that on September 8, he and his brother, Ramundo, were driving in an alley by their house, 4633 West Schubert in Chicago, when Catoc saw a Kia Sorrento SUV drive past him. Catoc parked in his garage and started unloading groceries when three black men, ages 30-45, approached from the alley. In his right hand, defendant pointed his chrome gun, 6-7 inches in length, at Ramundo's chest, demanded money and then took Ramundo's wallet. On cross-examination, Catoc further described the gun as a pistol with a magazine. Another of the robbers took Catoc's wallet and cash. A neighbor testified that he saw three black men running from Catoc's garage into a dark vehicle parked in the alley bearing license plate number N040644. The neighbor further identified the green Kia SUV in the State's photographic exhibit 12, as the vehicle he observed.

¶ 2 No handguns were recovered from the robberies, and the gun was never fired in any of the robberies.

¶ 2 Trial evidence showed that around that time, codefendant Washington, who was 6'3," 190 lbs. and age 34, was listed on a series of Enterprise rental cars in Oak Park as an authorized user by his wife, Suzette Washington.[2] Specifically, evidence showed Suzette rented a silver "HHR" vehicle on August 24. The next day, she traded it in for a Pontiac G6. That night, on August 25, she traded the Pontiac for a silver Nissan Altima. The rental of the silver Altima occurred just days before the armed robbery of Hasan, during which he witnessed the robbers driving away in a silver Altima with a similar, albeit different, license plate number. Hasan reported the license plate number as N280083 when it was actually N280030. Suzette returned the Altima on

[2] The record does not make clear whether it was Suzette renting the cars or someone with her identification card. Likewise, it does not make clear whether she was returning and then renting subsequent cars or whether Washington was doing so as her authorized user.

September 6, only to replace it with a green Kia Sorrento SUV, which was subsequently pegged as the getaway vehicle in the armed robbery of Catoc and Ramundo on September 8. As stated, their neighbor also reported the Kia license plate number as N040644, which was similar but different from the actual number of N240644.

¶ 2 Sergeant Dominic Ciccola testified that on September 8, he was investigating a series of armed robberies with a handgun involving 2-3 tall black males occurring in the victim's garages and alleys. In the course of investigating the armed robbery of Catoc and Ramundo, Sergeant Ciccola discovered that the Kia, reported as the getaway car, was leased via Enterprise**.** The same day on September 8, he saw the car at Suzette's home (5334 West Van Buren) before Washington entered it, speeding off. Police then apprehended Washington. Inside the Kia, police discovered what was later identified as Hasan's Movado watch. Sergeant Ciccola also identified the Kia SUV from the State's exhibit 12.

¶ 2 Once in police custody that same day, Washington essentially implicated defendant as his companion robber. In the presence of the police, Washington called defendant on speakerphone. Defendant, presumably unaware that he was making statements to police, said: "They know about the silver car. It's all over the news. And then they know about the licks. The police know about the licks. They said they were looking for some tall black males." Sergeant Ciccola testified the term "licks" is slang for robberies. Defendant repeated, "they know about the licks. They know about the car, bro. The police have sketches of us." With police still listening in on the conversation, defendant agreed to meet Washington at a designated location. Once there, defendant was placed in police custody. Sergeant Ciccola testified that he recognized defendant's voice in person as the same he had heard on speakerphone some 30 minutes before.

On September 8, defendant and Washington were placed in lineups presented to the victims of the armed robberies.

¶ 2 Hasan and Catoc identified defendant in the lineup and also in court as the robber with the gun. Hasan, however, did not pick defendant from a photographic lineup. Likewise, although Washington participated in the physical line-up, Hasan did not identify him. From the lineup, Hawkins identified defendant as the robber and Washington as the armed robber. Hawkins also identified defendant in court. There was some confusion as to whether the lineup participants were sitting or standing, with the victims all testifying that at some point defendant and/or the lineup participants were standing, although the police officers conducting the lineup recalled only that the participants were sitting. There was some testimony that defendant and Washington walked up to the looking glass during the lineup.

¶ 2 The State rested, and defendant presented evidence that no weapon or West Schubert robbery proceeds were recovered even though police searched several rooms in his mother's home.

¶ 2 As stated, the jury found defendant guilty of armed robbery with a firearm, and he was then sentenced as a habitual criminal to life in prison. This appeal followed.

¶ 2 ANALYSIS

¶ 2 Defendant first contends the State failed to prove beyond a reasonable doubt that he used a firearm when robbing Hasan. Defendant specifically argues the State did not present a firearm at trial or any evidence to prove his weapon met the statutory definition of "firearm" set forth below. He asks that we reduce his conviction to aggravated robbery.

¶ 2 When a defendant challenges the sufficiency of the evidence, a reviewing court must determine whether, after viewing the evidence in the light most favorable to the prosecution, any

rational trier of fact could have found the essential elements of the crime to have been proven beyond a reasonable doubt. *People v. Belknap*, 2014 IL 117094, ¶ 67. We will not overturn a criminal conviction except in instances where the evidence is so improbable or unsatisfactory as to warrant a reasonable doubt of the defendant's guilt. *People v. Campbell*, 146 Ill. 2d 363, 374 (1992). Because the trial court is better situated to observe the witnesses, that court is entitled to assess their credibility, resolve conflicts in the evidence and draw reasonable inferences therefrom. *People v. Jackson*, 2016 IL App (1st) 141448, ¶ 14. Thus, we will not substitute the trial court's credibility assessments with our own. *Id*. Furthermore, this deferential standard equally applies to a trier of fact's assessment of a witness' testimony that the defendant had a firearm, even where the witness was unable to accurately describe the weapon. *Id*. at ¶ 15.

¶ 2 To show defendant committed armed robbery in this case, the State was required to prove defendant knowingly took property from Hasan's person or presence by the use of force or threatening the imminent use of force while defendant carried on or about his person or was otherwise armed with a firearm. See 720 ILCS 5/18-1(a), 18-2(a)(2) (West 2010). A firearm is "any device *** designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas" but excludes such weapons as BB guns, spring guns, paint ball guns, and antique firearms. 720 ILCS 5/2-7.5 (West 2010); 430 ILCS 65/1.1 (West 2010). Armed robbery is a Class X felony, carrying 6 to 30 years, plus a 15-year add-on. 720 ILCS 5/18-2(b) (West 2010); 730 ILCS 5/5-4.5-25(a) (West 2010). And, here as stated, because the present conviction was defendant's third Class X felony, defendant was sentenced to natural life as a habitual criminal. See 730 ILCS 5/5-4.5-95(a) (West 2010).

¶ 2 This court has already determined that the State need not present a firearm in order for the trier of fact to find the defendant possessed one. As aptly stated in *Jackson*, under the broad

statutory definition of firearm, the "unequivocal testimony that the defendant held a firearm constitutes circumstantial evidence sufficient to show the defendant was armed within the meaning of the statute. Similarly, courts have consistently held that eyewitness testimony that the offender possessed a firearm, combined with circumstances under which the witness was able to view the weapon, is sufficient to allow a reasonable inference that the weapon was actually a firearm." 2016 IL App (1st) 141448, ¶ 15 (citations omitted); see also *People v. Washington*, 2012 IL 107993, ¶ 36 (noting, from the victim's unequivocal testimony and circumstances for viewing the gun, the jury could have reasonably inferred that defendant possessed a real gun); *People v. Clark*, 2015 IL App (3d) 140036, ¶ 20.

¶ 2 Here, the evidence was sufficient for the trial court to find defendant possessed a firearm. Hasan unequivocally testified that defendant, when only about a foot away, said "do you know what the fuck this is" as he brandished in his right hand a small, champagne-gold colored gun and ordered Hasan to remain in the garage corner, threatening to "shoot" him otherwise. See *People v. Toy*, 407 Ill. App. 3d 272, 289 (2011) (finding a victim's testimony that the defendant threatened to kill her provided circumstantial evidence that he was armed with a firearm). Hasan testified that he recognized the weapon as a gun because he had seen Chicago Park District police officers with guns before. Hasan's testimony did not reflect speculation or conjecture, and demonstrates he had sufficient opportunity to observe the weapon. The testimony was also corroborated, as further discussed below, by Hawkins and Catoc, who also described a gun being used during their robberies. The jury evidently found the lack of physical evidence did not undermine Hasan's competent testimony that defendant used a firearm to commit the robbery. See *People v. Hunter*, 2016 IL App (1st) 141904, ¶¶ 17, 19, *appeal allowed*. We will not substitute the jury's credibility determinations with our own.

¶ 2 Defendant's argument that firearms are easily mistaken for toy guns and other similar points have already been addressed and disposed of by this court. See *Clark*, 2015 IL App (3d) 140036, ¶ 24, ¶¶ 20-29; *People v. Malone*, 2012 IL App 1 st 110517, ¶¶ 41-52, relying on *Washington*, 2012 IL 107993. We need not repeat ourselves here.

¶ 2 Defendant next contends the trial court erred in permitting the State to present other-crimes evidence. He argues there was no evidence recovered connecting defendant to the other robberies to prove identity, nor were the similarities between the crimes sufficient to support *modus operandi*. Defendant requests that we reverse his conviction and remand for a new trial.

¶ 2 Other-crimes evidence, while not admissible to show a defendant's propensity to commit crime, is admissible if relevant for other purposes like *modus operandi* and identity. *People v. Coleman*, 158 Ill. 2d 319, 333 (1994). *Modus operandi* and identity are related in that they both serve to identify the defendant as the perpetrator of the offense at issue, but they work in different ways. *People v. Quintero*, 394 Ill. App. 3d 716, 726 (2009). For example, *modus operandi* is circumstantial evidence of identity, insofar as the distinctive pattern of criminal behavior suggest a common author, and this strengthens the identification of the defendant. *Id.* Distinctive links may be found in evidence that the defendant used similar weapons, dressed similarly, acted with the same number of people, or used a distinctive method of committing the particular offense. *People v. Phillips*, 127 Ill. 2d 499, 522 (1989). The use of other-crimes evidence to show identity, on the other hand, links the defendant to the offense at issue through some evidence, typically an object, from the other offense. *Quintero*, 394 Ill. App. 3d at 727; see also *Coleman*, 158 Ill. 2d at 335-36 (finding that the defendant was linked to the victim's murder because the gun used to kill the victim was of the same type the defendant used to kill another person). Accordingly other-crimes evidence used to show identity requires a less substantial

showing of similarity than other-crimes evidence used to show *modus operandi*. *Id*. We review a trial court's decision to admit other-crimes evidence for an abuse of discretion. *People v. Wilson*, 214 Ill. 2d 127, 136 (2005).

¶ 2 For the reasons to follow, we find that the trial court did not abuse its discretion. First, the other-crimes evidence was sufficient to link defendant to Hasan's crime for purposes of showing identity. The State's evidence demonstrated that police apprehended Washington in the same Kia SUV used as the getaway car in the armed robbery of Ramundo and Catoc, which occurred only some 8 days after the armed robbery of Hasan. In that vehicle, they discovered what was later identified as Hasan's Movado watch. Likewise, on September 8, the same day Washington was apprehended in the Kia, defendant essentially admitted to police that he had been involved in "licks" or robberies and used a silver car, a description consistent with the getaway vehicles testified to by both Hasan and Hawkins. The series of Enterprise rental cars, the discovery of the Movado wristwatch in the Kia driven by his codefendant on the same day as the Catoc/Ramundo armed robbery, together with defendant's telephone admissions, served as sufficient links to admit evidence involving the two other armed robberies.

¶ 2 As to *modus operandi*, defendant acknowledges that all three armed robberies were committed by black males against victims in garages facing alleyways and within a three-week period between August 21 and September 8, 2011. He nonetheless contends there are more differences than similarities, and the similarities were not sufficiently distinctive for *modus operandi*. We disagree. While some dissimilarity will always exist between independent crimes, in the case at bar the method of committing the three crimes with the same cofelon was sufficiently distinctive for *modus operandi*. See *People v. Shief*, 312 Ill. App. 3d 673, 681 (2000).

¶ 2 The evidence shows that defendant and his cohort of one or two others first cased the victims' homes from the back alleyway. Once the victims were inside or exiting their garages, defendant and his cohort then approached them on foot from the alley, brandished a weapon, and cornered the victims in their garages while forcibly taking their belongings. While the brandishing of the weapon and taking of belongings is common to all armed robberies, here, the use of garage alleyways to commit the crimes followed by the offenders' flight in the series of Enterprise cars rented in the same three-week period as two of the armed robberies and where the victims described the vehicles consistent with the rental records is a particular and unusual pattern of criminal behavior. These robberies also were committed all within the same general geographic area of the city[3].

¶ 2 In a case where defendant's identity was central, Hasan and Hawkins described defendant similarly as sporting short dreadlocked or cornrowed hair; Hasan and Catoc also described the offenders as between ages 35-40 or 30-45; and all three victims identified defendant in the lineup and at trial. See *People v. Littleton*, 2014 IL App (1st) 121950, ¶ 44 (noting, the use of *modus operandi* evidence is especially proper when the defendant's identity is the central issue and acts as circumstantial evidence of defendant's identity as the offender). From the lineup, Hawkins and Catoc also identified Washington, an authorized user of the Enterprise vehicles employed in two robberies. As stated, inside one such vehicle driven by Washington was Hasan's watch. See *Shief*, 312 Ill. App. 3d at 682. Moreover, defendant admitted his involvement in robberies he committed with Washington, and Washington led police to defendant. Again, during that admission defendant described the vehicles used during the robberies as silver, consistent with

[3] Although this distance is not a part of the record on appeal, this court may take judicial notice of the distances between two locations. *People v. Deleon*, 227 Ill. 2d 322, 326, fn. 1 (2008). Google maps shows that the distance between Hasan's home to Hawkins' home is about 15.5 miles, while the distance between Hasan's home and Catoc's home is about 5.5 miles.

Hawkins' description of the getaway vehicle. This combined evidence all points to the handiwork of defendant, Washington, and another. *People v. Smith*, 236 Ill. App. 3d 1060, 1063 (1992) (noting, it is the similarity of conduct as a whole, not the uniqueness of any single factor, which is the key to establishing *modus operandi*). In short, the trial court did not abuse its discretion in admitting other-crimes evidence based on identity or *modus operandi*, as that evidence tended to corroborate that it was defendant who committed the armed robbery against Hasan. Defendant's claim fails.

¶ 2 Defendant next contends the prosecutors' remarks during closing arguments were improper and prejudicial warranting a new trial. Defendant cites, among other such examples, the prosecutor's remarks that the armed robbery victims were "good, honest, hardworking individuals" and "good, decent people" who "bravely came into this courtroom" to testify against defendant after he "terrorized" them with a gun. Defendant argues these and similar comments during rebuttal only served to inflame the jury.

¶ 2 It is well settled that a prosecutor is allowed a great deal of latitude in closing argument and has the right to comment upon the evidence presented and upon reasonable inferences arising therefrom, even if such inferences are unfavorable to the defendant. *People v. Hudson*, 157 Ill. 2d 401, 441 (1993). The prosecutor may also respond to comments by defense counsel that clearly invite a response. *People v. Willis*, 2013 IL App (1st) 110233, ¶ 102. However, a prosecutor must refrain from making improper, prejudicial comments and arguments. *Hudson*, 157 Ill. 2d at 441. Even if a prosecutor's closing remarks are improper, they do not constitute reversible error unless they result in substantial prejudice to the defendant such that absent those remarks the verdict would have been different. *Id*. While it is not clear whether the appropriate standard of review for this issue is *de novo* or abuse of discretion, we need not resolve the matter,

because our holding in this case would be the same under either standard. *People v. Luna*, 2013 IL App (1st) 072253, ¶ 125. That is, viewing the remarks in the context of the entire closing argument, as we must, we conclude there was no reversible error committed here. See *People v. Nicholas*, 218 Ill. 2d 104, 122 (2005).

¶ 2 This is because the comments complained of were largely fair inferences based on the evidence, which showed defendant did indeed threaten a number of individuals at gunpoint in their garages in order to rob them of property. The prosecution argued defendant viewed the individuals, who were coming home from work or unloading groceries, merely as opportunities to enrich himself, thereby dehumanizing them. To say this was a form of "terror" of normal, hardworking individuals was fair comment. See *Nicholas*, 218 Ill. 2d at 122; see also *People v. Raymond*, 404 Ill. App. 3d 1028, 1061 (2010) (noting, prosecutors may comment on the evidence and draw reasonable inferences therefrom while dwelling on the evil results of crime and urging fearless administration of the law). Likewise, certain comments, like calling the witnesses "good" or "decent" were made in response to defense counsel's closing argument challenging the State's witness identifications and credibility. Although the prosecutor at points leaned to the melodramatic, stating "outside the confines of this courtroom, guns to people like [defendant] are power," these comments were not excessive and were in no way so egregious as to warrant reversal. See *Hudson*, 157 Ill. 2d at 441; see also *Coleman*, 158 Ill. 2d at 347 (noting, the verdict must not be disturbed unless it can be said that the remarks resulted in substantial prejudice to the accused, such that absent those remarks the verdict would have been different). The jury would have reached the same conclusion in the absence of the comments.

¶ 2 Defendant also argues the prosecutor's rebuttal argument regarding DNA, or the lack thereof, was improper. The defense in opening and closing argument noted that there was no

DNA evidence recovered in the case, and in rebuttal, the prosecutor acknowledged this fact but in a rather lengthy manner then argued it was not needed to find defendant guilty. He stated, for example, "To suggest to you that because no DNA was found in that garage in spite of all the other evidence that that should mean that an armed robber goes free is a disgrace and an insult to your intelligence." He also stated, "Your job is not to consider what doesn't exist. Your job is to base your verdict on what does exist. And the reason the defense wants to keep focusing on ghosts and things that don't exist and cause you to ignore what does is because the evidence that does exist is a mountain of evidence that shows he's guilty."

¶ 2 Defendant argues these comments improperly accused defense counsel of deception and shifted the burden of proof. We disagree. While the prosecution cannot accuse defense counsel of attempting to create reasonable doubt by confusion, misrepresentation, or deception, nothing precludes a prosecutor from challenging the credibility of the defense theory or its persuasiveness and, again, from responding in rebuttal to defense statements that invite a response. *Willis*, 2013 IL App (1st) 110233, ¶ 110; *People v. Robinson*, 391 Ill. App. 3d 822, 840 (2009). Here, the prosecutor's comments were grounded in the evidence and responded to defense counsel's opening and closing argument claiming the evidence of defendant's guilt was uncorroborated because of the lack of gun and DNA evidence. The prosecutor correctly stated that the lack of DNA evidence did not preclude the jury from finding other evidence corroborating that defendant robbed Hasan at gunpoint and did not personally attack defense counsel. Even absent these comments, given the evidence, we conclude the jury would not have reached a different verdict. Considering the prosecution's comments as a whole and in context, there was no error, and defendant's contention as to closing argument fails. See *id*. at 839.

¶ 2 Defendant finally challenges the Habitual Criminal Act (Act) (730 ILCS 5/5-4.5-95(a) (West 2010)). Under the Act, a defendant is a habitual criminal, subject to a mandatory life sentence without parole, if he is convicted of three separate Class X offenses in 20 years, excluding time in custody. *Id.*; *People v. Fernandez*, 2014 IL App (1st) 120508, ¶ 47. In this case, defendant was convicted of committing armed robbery with a firearm, a Class X offense. At sentencing, the State submitted evidence showing defendant previously was convicted of both armed robbery and armed robbery with a handgun in 1993. He was also convicted of aggravated vehicular highjacking and armed robbery in 2001. Based on the foregoing, the trial court sentenced him as a habitual criminal to life imprisonment.

¶ 2 Defendant contends the Act violates the eighth amendment to the United States Constitution and, as-applied, also violates the proportionate penalties clause of the Illinois Constitution (Ill. Const. Art. 1, § 11). He argues his life sentence is so disproportionate to the severity of his offense as to shock the moral sense of the community and is therefore cruel and unusual. Virtually the same arguments were recently raised and rejected in *Fernandez*, 2014 IL App (1st) 120508, where the court affirmed the mandatory life sentence under the Act for a three-time drug convict. While acknowledging the sentence was harsh for the series of nonviolent drug offenses, this court held it did not violate the proportionate penalties clause given the defendant's status as an adult principal offender and also given that he had been convicted three times of distributing large quantities of narcotics, thus posing a pattern of recidivism and risk to the community. *Fernandez* likewise held that the defendant's life sentence did not violate the eighth amendment under U.S. Supreme Court and Illinois precedent.

¶ 2 We see no reason to depart from the sound reasoning and conclusions reached in *Fernandez*, and the cases it relied upon. See also *People v. Collins*, 2015 IL App (1st) 131145, ¶

35 (following *Fernandez*). Here, defendant has been convicted of vehicular highjacking and armed robbery multiple times. At age 35, he was the principal in the present offense. As stated, defendant backed Hasan into his garage corner and threatened to shoot him while taking his property. This scenario was part of defendant's *modus operandi*, as revealed by Hawkins and Catoc. Defendant's criminal behavior thus exhibits a pattern of recidivism and risk to the community. While defendant appears to argue his armed robbery was not violent, in part, because no physical harm resulted, we observe that the legislature and courts have repeatedly concluded that crimes committed with firearms enhance the offender's ability to kill the intended victim or inflict harm or death on bystanders. See *People v. Sharpe*, 216 Ill. 2d 481, 524 (2005). Thus, forcibly taking people's property at gunpoint is inherently violent. Defendant's constitutional challenge to the Act therefore fails.

¶ 2 CONCLUSION

¶ 2 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 2 Affirmed.