

No. 1-14-3782

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 13 CR 4199
	)	
LAMONT CRAWFORD,	)	Honorable
	)	Stanley Sacks,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.  
Justices Rochford and Delort concurred in the judgment.

**ORDER**

¶ 1 *Held:* The defendant's conviction and sentence are affirmed where (1) the State presented sufficient evidence to prove him guilty of armed robbery beyond a reasonable doubt, and (2) the armed robbery statute, as applied to the defendant, does not violate the proportionate penalties clause or due process clause of the Illinois Constitution.

¶ 2 Following a bench trial, the defendant, Lamont Crawford, was convicted of armed robbery with a firearm (720 ILCS 5/18-2(a)(2) (West 2012)) and sentenced to 25 years' imprisonment. On appeal, he argues that (1) the State failed to prove him guilty of armed robbery beyond a reasonable doubt because it did not establish that the weapon used during the

offense was a firearm, and (2) the armed robbery statute, as applied to him, violates the proportionate penalties clause and due process clause of the Illinois Constitution. For the reasons that follow, we affirm.

¶ 3 In February 2013, the State charged the defendant with, *inter alia*, armed robbery (720 ILCS 5/18-2(a)(2) (West 2012)) for knowingly taking property from the person or presence of Michael Davis by the use of force or by threatening the imminent use of force while armed with a firearm.

¶ 4 At trial, the State introduced evidence establishing that, at approximately 7 p.m. on October 8, 2012, Davis was on his way home from school when he was confronted by two men in a stairwell at the 83rd Street (Avalon Park) Metra station. Davis testified that one of the men, later identified as the defendant, demanded his "stuff," while the other man removed a gun from a shopping bag and forced him into a corner. Davis described the gun as black with a long barrel and "a little sight \*\*\* at the end of [the] barrel" and stated that it was being held a "couple of inches" from his body. When asked what happened next, Davis stated that he gave the defendant his cell phone, flash drive, keys, and a hairbrush, but the defendant returned the keys and hairbrush. After the defendant took the property, the man with the gun told Davis to be quiet and threatened to shoot him if he turned around.

¶ 5 After the defendant and his accomplice fled on foot, Davis ran home and told his mother what happened. Davis's mother, Monique Stone, testified that she called the police and then logged into her T-Mobile account to ascertain, in real time, the GPS location of Davis's cell phone. When the police arrived, Davis told them what happened and provided a description of the offenders as well as the gun that was used during the robbery. Stone also informed the police that the cell phone was currently located near 80th and Dobson Avenue.

¶ 6 After the police left, DeeJay, a family friend, picked Davis up and drove him toward the cell phone's location. Stone explained that she remained home to monitor the phone's location through T-Mobile's website and to provide updates to DeeJay regarding its location. Eventually, Stone led DeeJay to a McDonald's restaurant at 79th Street and Martin Luther King Drive. Upon arriving at the McDonalds, Stone called Davis's cell phone. Davis testified that he noticed the defendant sitting in the passenger seat of a vehicle in the drive-through and also observed him holding his cell phone, which was illuminated from an incoming call. DeeJay stopped next to the defendant's vehicle and, although no words were exchanged, the defendant's vehicle suddenly exited the drive-through. DeeJay pursued the vehicle for approximately two blocks when they observed the defendant throw an object out of the car window. Davis retrieved the object from the street and confirmed that it was his cell phone. He stated, however, that his phone was missing the battery and a "back piece," rendering it inoperable.

¶ 7 Davis testified that his mother ordered a replacement battery, which arrived in the mail a few days later. Upon activating his cell phone, Davis noticed that the Facebook App was logged into the defendant's account. He also discovered that the defendant's Facebook contacts were synced into his cell phone and the call log contained incoming and outgoing calls to and from the defendant's Facebook contacts. Stone testified that she called the police and provided them with the information found on Davis's phone.

¶ 8 Officer Joseph Murtaugh of the Chicago police department testified that he was assigned to investigate the robbery that took place on October 8, 2012, at the Avalon Park Metra station. He stated that he interviewed Davis and Stone and, based upon information he gathered from those interviews, he was able to generate a photo array that included the defendant. On October 15, 2012, Davis viewed the photo array and positively identified the defendant as the person who

took his cell phone. On November 13, 2012, Officer Murtaugh arrested the defendant and transported him to the fourth district police station.

¶ 9 Detective Gorman testified that, on November 13, 2012, he was assigned to investigate the armed robbery and, as part of his investigation, he conducted a physical lineup. He stated that Davis arrived at the police station, viewed the lineup, and identified the defendant as one of the individuals who robbed him.

¶ 10 Detective Gorman further testified that he interviewed the defendant around midnight on November 14, 2012, after advising him of his *Miranda* rights. Although the defendant initially denied having been involved in any robberies, he later admitted that he "remembered the incident." The defendant explained that a man attempted to rob him at gunpoint with a black .32 caliber revolver, but he did not have anything to give to the man. As a result, the man became angry, threatened to kill the defendant, and ordered him to help him rob someone else. The defendant told Detective Gorman that he approached Davis, went through his pockets and took his cell phone, while the other man produced the handgun. The defendant acknowledged that he never called the police to report the attempted armed robbery of himself, nor did he attempt to return Davis's cell phone. When Detective Gorman asked the defendant why he kept the cell phone, the defendant replied that the man who forced him to commit the robbery never saw him take the phone. Detective Gorman testified that the defendant became upset and changed his story, claiming that he purchased the cell phone from Davis and that Davis was disappointed because he "made a bad deal."

¶ 11 After the State rested, the defendant recalled Detective Gorman who testified consistently with his testimony during the State's case-in-chief. The defendant also presented two stipulations. First, the parties stipulated that, if called to testify, Officer Lee Caldwell would

state that he met with Davis and Stone at their home and that Davis described both suspects as black males who were 20 to 23 years old, 5 feet, 7 inches to 5 feet, 9 inches tall, with dark brown complexion. The parties also stipulated that the defendant is 6 feet, 2 inches tall.

¶ 12 Following closing arguments, the court found the defendant guilty of armed robbery with a firearm. It noted that Davis testified credibly and that any inconsistencies in his testimony were minor. The court further noted that Davis's testimony that a gun was used during the robbery was corroborated by the defendant himself who admitted an armed robbery took place, but stated that he was forced to participate in the robbery. The trial court denied the defendant's posttrial motions and sentenced him to 25 years' imprisonment. This appeal followed.

¶ 13 The defendant first contends that the State failed to prove beyond a reasonable doubt that a firearm was used during the robbery and, consequently, his conviction should be reduced from armed robbery to robbery. The State argues it presented sufficient evidence that a firearm was used based upon Davis's unequivocal and credible testimony.

¶ 14 When considering a challenge to the sufficiency of the evidence in a criminal case, our function is not to retry the defendant. *People v. Washington*, 2012 IL 107993, ¶ 33. Rather, our inquiry is 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 offense beyond a reasonable doubt. *Id.* This means that we must allow all reasonable inferences from the record in favor of the prosecution. *Id.* We will not reverse a conviction unless " 'the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt.' " *Id.* (quoting *People v. Ross*, 229 Ill. 2d 255, 276 (2008)).

¶ 15 To prove the defendant guilty of armed robbery with a firearm, the State was required to show that the defendant, or someone he was accountable for, "knowingly [took] property \*\*\*

from the person or presence of another by the use of force or by threatening the imminent use of force" and that he, or someone he was accountable for, "carrie[d] on or about his person or [was] otherwise armed with a firearm." 720 ILCS 5/18-1(a), 18-2(a)(2) (West 2012). A firearm for purposes of section 18-2(a)(2) of the Criminal Code of 2012 has the meaning ascribed to it by section 1.1 of the Firearm Owners Identification Card Act (FOID Card Act). 720 ILCS 5/2-7.5 (West 2012)). In relevant part, the FOID Card Act defines a "firearm" as "any device, \*\*\* which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas." 430 ILCS 65/1.1 (West 2012). Excluded from this definition are, *inter alia*, pneumatic guns, spring guns, paint ball guns, certain BB guns, and signal guns. *Id.*

¶ 16 The defendant asserts that the evidence was insufficient to prove that the gun used in the robbery was real where no weapon was recovered and no photographs or visual evidence of the gun was presented at trial. He contends that Davis's description of the gun was too sparse to prove that the object he saw was in fact a firearm, and not one of the devices excluded from the firearm definition, such as an air gun, spring gun, or BB gun. We disagree.

¶ 17 This court's decision in *People v. Malone*, 2012 IL App (1st) 110517, is instructive. In *Malone*, a single victim testified that during a robbery the defendant held what appeared to be a gun. This testimony was corroborated with a still photograph from surveillance video showing the defendant holding what looked to be an actual gun. *Id.* ¶ 28. The defendant in *Malone* similarly argued that the gun was never recovered and the witness's testimony was deficient because she did not provide a detailed description of the gun, "so there is no way to compare characteristics of the gun with those of a real or toy gun to determine what the object in the offender's hand was." *Id.* ¶ 41. This court rejected the defendant's argument, stating that the victim's testimony, coupled with the videotape of the offense, was sufficient, and "[t]here was no

contrary evidence presented that the gun was a toy gun, a BB gun, or anything other than a 'real gun.' " *Id.* ¶ 52.

¶ 18 Similarly here, nothing in the record suggests that the object the accomplice had in his possession was anything other than a firearm as defined in the FOID Card Act. While there was no surveillance video of the crime as in *Malone*, Davis had ample opportunity to view the weapon at a close distance during the robbery. He described the weapon as a handgun, black in color, with a long barrel and a front sight. He also testified that the gunman forced him into a corner and threatened to kill him. Davis's testimony was corroborated by statements the defendant made to Detective Gorman that an armed robbery took place and the gunman was armed with a black .32 caliber revolver. No evidence was presented that could lead the trier of fact to any conclusion other than that the weapon the accomplice used in the robbery was a firearm. The factual judgment of whether Davis knew the firearm was real and not a replica or toy, is a determination best left for the trier of fact who observed the victim testify about the events in question. See *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Moreover, the fact that no gun was recovered is not fatal to the State's case as Illinois courts have repeatedly held that the recovery of an alleged firearm used during the commission of a crime or its introduction into evidence is not a prerequisite for an armed robbery conviction. See *Washington*, 2012 IL 107993, ¶¶ 24, 37. Given Davis's unequivocal and uncontroverted testimony, viewed in the light most favorable to the State, we find that a rational trier of fact reasonably could have inferred that the defendant's accomplice possessed a real firearm during the commission of the crime. See *People v. Hunter*, 2016 IL App (1st) 141904, ¶ 16 (unequivocal testimony of a witness that the defendant held a gun is circumstantial evidence sufficient to establish that a defendant is armed during a robbery).

¶ 19 Nonetheless, the defendant submits a photograph of a pellet gun to show that Davis's description of the "gun" is "literally indistinguishable from many pellet guns and replicas." However, we cannot consider this evidence on appeal because it was not offered as evidence at trial and was never considered by the trier of fact. See *id.* ¶ 20 (to consider photographs of a pellet gun and air pistol not submitted to the trial court amounts to a trial *de novo* on an essential element of the charges). Accordingly, we decline to consider the newly introduced photograph.

¶ 20 We also reject the defendant's claim that the State was required to prove that the gun the accomplice used was not one of the devices excluded from the statutory firearm definition, such as an air gun, spring gun, BB gun, starter pistol, or a toy. This argument is without merit. See *People v. Beacham*, 50 Ill. App. 3d 695, 700 (1977) (noting that the State "need not seek out and disprove every possible alternative explanation of a crime before an accused can be found guilty").

¶ 21 In sum, Davis's unequivocal testimony that the defendant's accomplice possessed a gun during the commission of the robbery is sufficient to sustain a conviction for armed robbery with a firearm.

¶ 22 The defendant next argues that, as applied to him, the Class X offense of armed robbery with a firearm violates the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11) because it carries a more severe penalty than the Class 1 offense of aggravated robbery.

¶ 23 The constitutionality of a statute is a question of law that we review *de novo*. *People v. Williams*, 2015 IL 117470, ¶ 8. An as-applied challenge to a statute's constitutionality requires a showing that the statute violates the constitution as it applies to the facts and circumstances of the challenging party. *People v. Thompson*, 2015 IL 118151, ¶ 36. In contrast, a facial challenge



to a statute's constitutionality requires a showing that the statute is unconstitutional under any set of facts, such that the specific facts related to the challenging party are irrelevant. *Id.* All statutes carry a "strong presumption of constitutionality," and the party challenging the statute has the burden of clearly establishing its invalidity. *People v. Mosley*, 2015 IL 115872, ¶ 22.

¶ 24 The proportionate penalties clause provides that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. "In analyzing a proportionate penalties challenge, our ultimate inquiry is whether the legislature has set the sentence in accord with the seriousness of the offense." *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005). A sentence violates the proportionate penalties clause if: (1) it is so cruel, degrading, or disproportionate to the offense that the sentence shocks the moral sense of the community; or (2) it is greater than the sentence for an offense with identical elements. *Id.* at 521.

¶ 25 In cases such as this one, where the defendant argues solely that the second, or "identical elements," test is at issue, our supreme court has observed that, "[i]f the legislature determines that the exact same elements merit two different penalties, then one of these penalties has not been set in accordance with the seriousness of the offense." *Id.* at 522. Thus, where identical offenses do not yield identical penalties, the penalties are unconstitutionally disproportionate and the greater penalty cannot stand. *Id.* at 504. An inquiry under this identical elements test necessarily begins with an examination of the elements required to convict under the relevant statutes and is limited to the express legislative provisions under review. *People v. Clemons*, 2012 IL 107821, ¶ 46.

¶ 26 In arguing that his conviction for armed robbery with a firearm violates the proportionate penalties clause, the defendant compares the offense to aggravated robbery and contends that both offenses proscribe "the exact same conduct," but yield different penalties.

¶ 27 To convict the defendant of armed robbery with a firearm, a Class X felony, the State is required to prove that (1) he took property from a person, (2) by the use of force or by threatening the imminent use of force, (3) while carrying a firearm on or about his person, or otherwise being armed with a firearm. 720 ILCS 5/18-2(a)(2) (West 2012). In contrast, to convict the defendant of aggravated robbery, a less-serious Class 1 offense, the evidence must establish that (1) he took property from a person, (2) by the use of force or by threatening the imminent use of force, (3) "*while indicating verbally or by his or her actions to the victim that he or she is presently armed with a firearm or other dangerous weapon, including a knife, club, ax, or bludgeon.*" (Emphasis added.) 720 ILCS 5/18-1(b)(1) (West 2012).

¶ 28 These offenses are not identical, as they apply to different conduct and have different elements. Unlike the offense of armed robbery with a firearm, which requires the State to prove that the defendant was armed with a firearm, the offense of aggravated robbery applies even though it is later determined that the defendant had no firearm at the time he committed the robbery. See 720 ILCS 5/18-1(b)(1) (West 2012). Moreover, for an armed robbery to exist, the defendant need not threaten the victim with the weapon. See *People v. Jones*, 293 Ill. App. 3d 119, 128 (1997) ("the victim need not even realize that the defendant has a weapon, so long as the State can show the victim was otherwise forced or threatened with imminent force to turn over property"). The offense of aggravated robbery, on the other hand, requires the defendant to state or imply to the victim that he has a firearm or other dangerous weapon. Because the

offense of armed robbery with a firearm does not have the same elements as aggravated robbery to which the defendant compares, his proportionate penalties argument fails.

¶ 29 The defendant argues, however, that the crime of armed robbery with a firearm "is indistinguishable" from the less serious offense of aggravated robbery. He asserts that the "exact same conduct" was punishable as both a Class 1 felony and as an enhanced Class X felony, with no evidentiary distinction between the two. The defendant concludes, therefore, that he "is being subjected to the same penalty for committing the 'lesser included,' and therefore less serious, offense of aggravated robbery, than he would be subject to for committing the greater offense of armed robbery with a firearm." We disagree.

¶ 30 The defendant's argument assumes what it attempts to prove. Even a casual consideration of the issue reveals that for a defendant to be convicted of armed robbery with a firearm, the State must prove an additional fact—*i.e.*, the defendant was armed with a firearm during the commission of the offense. 720 ILCS 5/18-2(a)(2) (West 2012). As discussed above, the State proved this additional fact at trial through the unequivocal and credible testimony of Davis. This is not a case in which different sentences are imposed for crimes with identical elements.

¶ 31 In addition, the defendant's analysis, despite his assertion to the contrary, improperly compares two offenses with different elements and penalties. This cross-comparison approach is precisely what our supreme court abandoned in *Sharpe*. See *Sharpe*, 216 Ill. 2d at 519 (stating that the "cross-comparison analysis has proved to be nothing but problematic and unworkable, and \*\*\* it needs to be abandoned."); see also *People v. Rizzo*, 2016 IL 118599, ¶ 42 (a penalty does not run afoul of the proportionate penalties clause simply because it differs from the penalty for a different offense with different elements).

¶ 32 We conclude, therefore, that the defendant's conviction for the Class X felony offense of armed robbery with a firearm may not be compared to the Class 1 felony offense of aggravated robbery. Consequently, there is no proportionate penalties clause violation in this case.

¶ 33 In a related argument, the defendant maintains that, as applied to him, the armed robbery with a firearm statute violates the eighth amendment to the United States Constitution (U.S. Const. amend. VIII). We note, however, although the defendant sporadically references the eighth amendment within his proportionate penalties analysis, his brief on appeal is bereft of any eighth amendment analysis and he fails to develop any argument regarding how the armed robbery statute runs afoul of the eighth amendment. Thus, the defendant has forfeited this issue on appeal. See Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016). Forfeiture aside, the Illinois Supreme Court has stated that the "proportionate penalties clause is coextensive with the cruel and unusual punishment clause." *In re Rodney H.*, 223 Ill. 2d 510, 518 (2006). Accordingly, for the same reasons his proportionate penalties argument fails, his eighth amendment challenge also fails. See *People v. Banks*, 2015 IL App (1st) 130985, ¶ 24.

¶ 34 Lastly, the defendant maintains that, as applied to him, the armed robbery statute violates the due process clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 2) because the penalty is not reasonably related to the harm the legislature sought to address.

¶ 35 When legislation does not affect a fundamental constitutional right, this court, in a due process analysis, applies the rational basis test to determine the legislation's constitutionality. *People v. Williams*, 235 Ill. 2d 178, 205 (2009). Generally, a statute violates the constitutional guarantee of due process under the rational basis test if it does not bear a rational relationship to a legitimate legislative purpose, or is arbitrary or unreasonable. *In re M.A.*, 2015 IL 118049, ¶ 55. In applying the rational basis test, we must identify the public interest the statute is

intended to protect, determine whether the statute bears a rational relationship to that interest, and examine whether the method chosen to protect or further that interest is reasonable. *Id.* Rational basis review is highly deferential, but it is not "toothless." *People v. Jones*, 223 Ill. 2d 569, 596 (2006). However, legislation must be upheld if there is a conceivable basis for finding that it is rationally related to a legitimate state interest. *In re M.A.*, 2015 IL 118049, ¶ 55.

¶ 36 In 2000, the legislature enacted Public Act 91-404, which amended the sentencing provisions for several different felonies, including armed robbery, when a firearm is involved in the commission of the offense. See Pub. Act 91-404, § 5 (eff. Jan. 1, 2000). The purpose of this legislation is to promote public health and safety and "to deter the use of firearms in the commission of felonies." *People v. Walden*, 199 Ill. 2d 392, 396 (2002); 720 ILCS 5/33A-1(a), (b) (West 2012). As our supreme court explained in *Sharpe*, the legislature sought to accomplish its goal by imposing a sentencing enhancement whenever a perpetrator is armed with a firearm during the commission of a serious felony. *Sharpe*, 2016 Ill. 2d at 531. The supreme court also stated that, "[u]nquestionably, the 15/20/25-to-life enhancements are reasonably designed to remedy the particular evil the legislature was targeting." *Id.* at 532. Because the sentencing enhancements were rationally related to the legislature's goal of deterring the use of firearms in the commission of robberies and promoting the public's health and safety, the supreme court held that the due process clause was not violated. *Id.* Given the supreme court's holding in *Sharpe*, we conclude that the sentencing enhancement for armed robbery with a firearm does not violate the due process clause.

¶ 37 Nevertheless, the defendant argues that the penalty imposed in his case has no reasonable relationship to the goal of deterrence because the evidence presented at trial, at best, establishes that he committed the less serious offense of aggravated robbery. As discussed above, however,

the State presented sufficient evidence at trial to prove the defendant guilty of armed robbery with a firearm and we decline the defendant's invitation to reweigh the evidence. And, while it is conceivable that a defendant's conduct might constitute separate offenses at the same time, it is well-settled that "the availability of different punishments for separate offenses based on the commission of the same acts does not offend the constitutional guarantees of \*\*\* due process." *People v. Wade*, 131 Ill. 2d 370, 379 (1989).

¶ 38 In sum, we conclude that the armed robbery statute, as applied in this case, does not violate the due process clause of the Illinois constitution.

¶ 39 For the reasons stated herein, we affirm the defendant's conviction and sentence for armed robbery with a firearm.

¶ 40 Affirmed.