2017 IL App (1st) 152247-U

FOURTH DIVISION
March 16, 2017

No. 1-15-2247

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 02767
	)	
ELEZIER DELGADO,	)	Honorable
	)	Nicholas Ford,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Ellis and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not err in denying defendant's motion to dismiss for destruction of evidence when no suggestion of bad faith was made; (2) defendant's prior AUUW was properly used as a predicate offense for armed habitual criminal under *People v. McFadden*, 2016 IL 117424; and (3) defendant's sentences were properly imposed based on the overall aggravating and mitigating factors.

¶ 2 Following a jury trial, defendant was found guilty of the armed robbery of a Payless shoe store, located at 4024 West North Avenue in Chicago. He was subsequently found guilty at a bench trial of armed habitual criminal (AHC). The trial court sentenced defendant to a term of 30 years for the armed robbery and a concurrent term of 15 years for AHC.

¶ 3 Defendant appeals, arguing that: (1) the trial court erred in denying defendant's motion to dismiss based on the destruction of evidence, specifically the coat and hat recovered from defendant at the time of his arrest; (2) defendant's conviction for AHC cannot stand because the evidence of the predicate offense was legally insufficient because his prior offense of aggravated unlawful use of a weapon (AUUW) was based on a statute found to be unconstitutional under *People v. Aguilar*, 2013 IL 112116; and (3) defendant's sentence was based in part on the aggravating factor of his prior AUUW conviction.

¶ 4 Defendant was charged with multiple counts, including armed robbery and AHC, arising from the January 10, 2013, robbery of a Payless shoe store. Prior to trial, defendant filed a motion to quash arrest and suppress evidence, which the trial court denied following a hearing. Defendant also moved to sever his AHC count from his armed robbery count, which the trial court granted. Defendant proceeded first with a jury trial on the armed robbery count, and later with a bench trial for the AHC count.

¶ 5 After jury selection, defendant orally moved to dismiss based on destruction of evidence because defense counsel had learned that defendant's hat and coat, which were taken into evidence following his arrest had been destroyed by the Chicago police department. After hearing arguments, the trial court denied the motion as well as defense counsel's request to bar the use of this evidence at trial. The court did allow counsel to cross-examine regarding the absence of the evidence.

¶ 6 The following evidence was presented at defendant's April 2015 jury trial on the armed robbery count.

¶ 7 Hilda Garcia testified that she was 45 years old and had been employed by Payless for 26 years. In January 2013, she was the store manager at the Payless located at 4024 West North

Avenue, between North Keystone Avenue and North Pulaski Road. On January 10, 2013, she was working with one employee, Yesenia Roman. The store was set to close at 7 p.m. that day. At approximately 6:30 p.m., she was working on paperwork in the back room with the door open. She was on "smiles" duty, which meant if a customer entered the store, she was to greet them. Roman was working on preparing the store for closing and working on straightening the shoes in the aisles. When Garcia heard the bell at the front door, she left the back room to see the customer.

¶ 8 Garcia observed two men. She described one as approximately 6'2", 180 pounds, and African American wearing a blue "security" type jacket and dark pants, and the other was between 5'4" and 5'6" tall, 140 to 150 pounds, and Hispanic. She stated that the Hispanic man was wearing a hat pulled down as a mask, but she could tell he was Hispanic based on the opening near the eyes and her observation of his complexion, which she said was "medium." Garcia testified that the Hispanic man was pointing a gun at her. She described the gun as a gray and black revolver. She said he pointed the gun at her the entire time he was in the store and she kept her eyes on the gun.

¶ 9 Garcia testified that the Hispanic man demanded the money from the register, and she complied. Then the African American man asked her to open the bottom safe near the register, which she did. Garcia stated that the money given from the register was loose, but the money from the safe was held by a paperclip. She gave the paperclipped money to the Hispanic guy. The African American man then told her to open the top safe, but Garcia said she told him the top safe would take 10 minutes to open. She said the African American man started "screaming" that he would shoot her if she did not open the safe. At this point, Garcia observed Roman on the right side of the aisle. The men ordered Garcia and Roman into the back room. The African

American man ordered Garcia to give him her phone. The Hispanic man then demanded Roman's phone. The women were ordered to lie down on the floor and told that if they moved, they would be shot. The men left the back room and went into the store area, closing the back room door.

¶ 10 Garcia stated that Roman got up and ran out the emergency door in the back room into the alley. Garcia also ran out and screamed for help, but then hid under the emergency stairwell until police arrived. The two women were placed in a police car. At some point, the police showed them a gun and asked if they recognized it. Garcia testified that it was the same gun used by the Hispanic man. She also identified the gun in court. The police then showed them a Hispanic man and asked if they recognized him. Garcia said she recognized him as the shorter Hispanic man by his black jacket and dark pants. The police also showed her money that was paperclipped, which Garcia identified as how the money is kept in the store safe.

¶ 11 On cross-examination, Garcia stated that she identified defendant by his clothing, which was the same clothes worn during the robbery, and by his size, height, weight, and skin tone.

¶ 12 Yesenia Roman testified that in January 2013, she was employed as service representative and cashier at Payless. At the time of trial, she was 23 years old and no longer employed at Payless. On January 10, 2013, Roman was working from 3 to 7 p.m. At 6:30 p.m., she was cleaning and preparing to close the store while Garcia was dealing with customers. She stated that she heard the bell, but continued to work in the aisle cleaning. She could not see the front of the store or cash register from her position, but she heard a male voice that was getting louder.

¶ 13 Roman stated that she looked around the corner and saw a tall African American man, but could not see Garcia. The man was ordering Garcia to open the safe. She said the man saw

her and then ordered her and Garcia to the back room. At that point, Roman saw the second man, described as around 5'6", wearing a mask, and holding a gun. Roman stated the gun was a revolver and was silver gray with a black handle.

¶ 14 Roman stated that the women were ordered to lie on the floor and not to move or they would be shot. The men left closing the door. Roman said she asked Garcia for a key to the emergency exit, forgetting that she could push the door open. She then exited through the emergency door and ran across the street to a Walgreens. She said she was crying and hysterical, and she told people in the store what had happened. She then called her boyfriend.

¶ 15 Roman returned to the Payless when she saw the police arrive. She stated that she answered questions and was placed in a police car with Garcia. She testified that she was shown a gun, which she identified as the one used by the shorter man. She stated that it was Payless policy to keep money in the safe held by paperclips. On cross-examination, Roman admitted that all she could say about the shorter man was that he was around 5'6", had a mask, and wore baggy clothes.

¶ 16 Robert Gallardo testified that he was 41 years old, and married with three kids. He admitted to two prior convictions: a 2015 domestic battery and 2004 aggravated unlawful use of a weapon.

¶ 17 On January 10, 2013, Gallardo stated that he was on the block of Keystone Avenue and North Avenue, standing with a couple people near the Payless. He observed a short, Hispanic woman in her late 30s come out of the back of the Payless yelling that she had been robbed. Gallardo then looked toward the front of the store and saw two men running together across the street from the Payless. He then ran towards the men. He observed one getting into a white car. The other man then turned to run the other direction from Gallardo. Gallardo continued to chase

the man until he ran into a laundromat at West Grand Avenue and North Karlov Avenue. Gallardo identified the man he chased as defendant. He stated that defendant was wearing a black jacket, black pants, and a brown hat.

¶ 18 Gallardo testified that he stood outside the laundromat and watched defendant through the glass windows. He received a call from his friend who had called the police. Gallardo was present when police officers arrived, and told them the man who robbed the Payless was inside the laundromat. When the officers exited the laundromat with defendant, Gallardo identified him as the man he had observed running from outside the Payless immediately after the woman screamed she had been robbed. He also identified defendant's brown hat to the officers. He identified a photograph of defendant as he was dressed that day.

¶ 19 On cross-examination, Gallardo admitted that he did not observe the actual robbery, nor did he see the two men exit from the Payless. He also admitted that he did not see defendant with a gun or money. Gallardo stated that the neighborhood was predominantly Hispanic and could be dangerous.

¶ 20 Officer Lenny Pierri testified that he was employed as a police officer in the second district of the Chicago police department. At approximately 6:30 p.m. on January 10, 2013, Officer Pierri was on duty alone in plain clothes, but wearing a vest, star, and gun belt. He received a notification of a nearby armed robbery at 4024 West North Avenue. As he was proceeding to the scene, he received a flash message that "some of the kids from the neighborhood just chased one of the offenders into a laundromat at Karlov and Grand." He then went directly to the laundromat, and was the first officer at that location. He saw an individual, later identified at Gallardo, pointing inside the laundromat. Gallardo told him that the man inside the laundromat had robbed the Payless. Officer Pierri entered the laundromat and walked toward

the man, who he identified as defendant. As he walked toward defendant, defendant began to walk toward the officer with his hands in the air. Officer Pierri handcuffed defendant and recovered a loaded .32 caliber revolver from defendant's jacket pocket. Officer Pierri handed defendant off to another officer for an additional search, which Officer Pierri observed. During that search, a stack of paperclipped money, $82 in total, was recovered.

¶ 21 Defendant was then taken to the Payless for a "show up." Officer Pierri testified that Garcia identified the gun as the one used in the robbery and that the paperclipped money looked like money from the store because of the paperclip. He could not recall if Roman identified the gun.

¶ 22 Officer Pierri identified surveillance videos from inside and outside of the laundromat showing defendant. On cross-examination, he described defendant's clothing as wearing a dark jacket with pockets and a "knit hat or mask you could flip into a hat." He said it was "a hat that you could pull down, and the center is cut out."

¶ 23 Detective Lorenty testified he was employed as a detective with the Chicago police department. On January 10, 2013, he was assigned to investigate the armed robbery of the Payless. He interviewed both Garcia and Roman. He learned there was a video system at Payless which could be activated by a fob with a panic button held by Garcia, but it malfunctioned during the robbery and failed to activate when pressed. He also testified that defendant was the man identified by Garcia as one of the perpetrators. Additionally, he said that Gallardo identified defendant. He recovered and inventoried a dark jacket and brown hat worn by defendant on the day of the robbery. He had placed a hold on the items, but when he went to retrieve the items, he discovered that they were mistakenly destroyed on January 15, 2015. On cross-examination,

Detective Lorenty admitted that no cell phones were recovered, and no "ski mask" was recovered.

¶ 24 Following Detective Lorenty's testimony, the State rested. Defendant moved for a directed verdict, which the trial court denied. Defendant then rested without presenting any evidence. Following deliberations, the jury found defendant guilty of armed robbery.

¶ 25 The trial court continued the case for the bench trial on the AHC count. At the July 2015 bench trial, the State presented two certified copies of conviction in support of the AHC charge. The first was an aggravated battery charge with a conviction date of December 21, 2007. The second was an aggravated unlawful use of a weapon (AUUW) charge also with a conviction date of December 21, 2007. The State then rested. Defendant moved for a directed verdict, which the trial court denied. The court then found defendant guilty of AHC.

¶ 26 At the subsequent sentencing hearing, the State argued the facts of the case in aggravation as well as a prior 2002 armed robbery in Wisconsin, a 2007 aggravated battery of peace officer, and the 2007 AUUW. In mitigation, defense counsel argued that defendant had been working at a factory since 2001, had 7-year-old daughter, a close relationship with his family, and no dependency issues. Defendant denied committing the offense. The trial court then sentenced defendant to 30 years in prison for armed robbery, and 15 years for AHC, to be served concurrently.

¶ 27 This appeal follows.

¶ 28 Defendant first argues that the trial court erred in denying his motion to dismiss for destruction of evidence. Specifically, defendant contends that the destruction of the jacket and hat was "essential to the defense's ability to contest identification of the Defendant, the evidence was not merely potentially useful, it was essential to the outcome of the case." The State

responds that defendant was not entitled to dismissal for the inadvertent destruction of evidence that had no value to the defense. We review the trial court's ruling on the motion to dismiss for an abuse of discretion. *People v. Sutherland*, 223 Ill. 2d 187, 235 (2006).

¶ 29 Initially, the State asserts that defendant has failed to preserve this issue for review because the issue was not raised in defendant's motion for a new trial. To preserve an issue for review, defendant must object both at trial and in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Failure to do so operates as a forfeiture as to that issue on appeal. *People v. Ward*, 154 Ill. 2d 272, 293 (1992). Defendant only makes a single reference to the plain error rule in the reply brief, but does not discuss the rule nor how it applies in the instant case beyond mere conclusions that the rule should be applied. This reference is not sufficient to raise the plain error rule on appeal and it is forfeited. See *People v. Nieves*, 192 Ill. 2d 487, 503 (2000) (finding that the failure to argue "that the evidence was closely balanced nor explains why the error is so severe that it must be remedied to preserve the integrity of the judicial process" waived plain error on appeal); 210 Ill. 2d R. 341(h)(7). Since defendant failed to preserve this issue on appeal and does not sufficiently raise the plain error rule as a basis for our review, we find this issue to be forfeited.

¶ 30 Forfeiture aside, defendant's argument fails. Here, the motion to dismiss was made orally in open court, no written motion was filed. The proceedings in full on this motion were as follows.

> "DEFENSE COUNSEL: Judge, we also do have another quick issue. I had learned from the State's Attorney that a piece of evidence in this case had been destroyed. Judge, at this time we

will be making a Motion to Dismiss the case based upon evidence – destruction of evidence.

THE COURT: What was destroyed?

PROSECUTOR: Judge, specifically it's a brown knit hat and black cloth jacket that was the clothing that was worn by the defendant at the time of commission of the [offense.] We were actually looking to bring that evidence in for the trial ourselves as [*sic*] the detective to go to the ERPS to pick that evidence up. At that time he learned despite the fact that he put a hold for investigation on those two items, that those two items were destroyed. So the detective did take the steps that he needed to take to safeguard that evidence. He told them that it needed to be held for investigation. They ignored his instructions, and those items were destroyed. It was under one inventory number.

THE COURT: I could find no malfeasance in the destruction of the items involved, and the drastic remedy of dismissing the case predicated on the absence of these two items is not a step this Court will make. So motion for dismissal predicated on the unlawful destruction of evidence in the case is denied.

DEFENSE COUNSEL: Understanding your ruling, your Honor, we still then would make a motion to bar the use of any of this evidence at trial considering that it has been destroyed, any use of it during testimony, videotape, or anything.

THE COURT: I am not going to disallow any of the testimony as it relates to the attire of the defendant.

PROSECUTOR: Judge, there is video that will be shown that he has the hat and the jacket in question on.

THE COURT: Certainly you can cross-examine the witnesses on the fact that these items are not with us here today.

DEFENSE COUNSEL: Thank you."

¶ 31 Illinois has applied the analysis in *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988), when considering the destruction of evidence. *Sutherland*, 223 Ill. 2d at 235. In *Youngblood*, the defendant was charged with kidnapping and sexually assaulting a minor, but the police failed to refrigerate the victim's semen-stained clothing or promptly test the stains; the State presented no scientific identity evidence and the defendant was convicted based on the victim's testimony. *Youngblood*, 488 U.S. at 52-54. The Supreme Court held that "unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law." *Id*. at 58. The court was unwilling to impose on the police an "undifferentiated and absolute duty to retain and to preserve all material that might be of conceivable evidentiary significance in a particular prosecution." *Id.*

¶ 32 Defendant argues that under *People v. Newberry*, 166 Ill. 2d 310, 317-18 (1995), he was entitled to sanctions, either the granting of his motion to dismiss or other relief.

¶ 33 In *Newberry*, the defendant was charged with unlawful possession of a controlled substance (cocaine). Initially, a test of the substance came back negative for cocaine, but a subsequent test yielded a positive result. The defendant then submitted a discovery request to test the substance. The State destroyed the substance despite the defendant's specific discovery

request to test the subject. *Newberry*, 166 Ill. 2d at 312-13. The supreme court distinguished its facts from *Youngblood*, finding a "fundamental distinction." *Id*. at 317. "Where evidence is requested by the defense in a discovery motion, the State is on notice that the evidence must be preserved, and the defense is not required to make an independent showing that the evidence has exculpatory value in order to establish a due process violation. [Citation.] If the State proceeds to destroy the evidence, appropriate sanctions may be imposed even if the destruction is inadvertent. No showing of bad faith is necessary." *Id.* The *Newberry* court ultimately affirmed the lower court's dismissal of the indictment in this case.

¶ 34 The Illinois Supreme Court in *Sutherland* noted that the holding in *Newberry* was called into question by the United States Supreme Court in *Illinois v. Fisher*, 540 U.S. 544 (2004). *Sutherland*, 223 Ill. 2d at 239-40. "In *Fisher*, the Court reversed a decision of the Illinois Appellate Court which had applied the *Newberry* analysis to reverse a drug-possession conviction where the disputed substance was destroyed by police. The Court disagreed with the outcome-determinative analysis set forth in *Newberry*, indicating that the applicability of the bad-faith requirement in *Youngblood* does not depend on 'the centrality of the contested evidence to the prosecution's case or the defendant's defense.' *Fisher*, 540 U.S. at 549. The Court reiterated its holding in *Youngblood* that the bad-faith requirement applies where the evidence destroyed is only 'potentially useful' evidence and not 'material exculpatory' evidence. *Fisher*, 540 U.S. at 549." *Id.*

¶ 35 Defendant contends that while *Newberry* has been called into question, it has never been overruled, citing *People v. Moore*, 2016 IL App (1st) 133814, ¶ 28. However, the court in *Moore* did acknowledge that since *Fisher*, "the appellate court has rejected *Newberry* and followed *Fisher*." *Id.* Moreover, the Illinois Supreme Court has more recently concluded in *Sutherland*

that there was no due process violation where there was no demonstration of bad faith by the State when the evidence in question was lost or destroyed before trial. *Sutherland,* 223 Ill. 2d at 237. Relying on *Youngblood*, the *Sutherland* court held that the defendant "failed to offer anything, other than mere speculation, demonstrating bad faith by the State." *Id.* We reject defendant's argument that *Newberry* controls in light of more recent holdings by our supreme court.

¶ 36 Under *Sutherland*, defendant's argument must fail. No evidence of bad faith has been asserted for the destruction of the hat and jacket, which were only potentially useful evidence, if that. The prosecutor informed the trial court that the detective had placed a hold on the items, but nevertheless, the items were inadvertently destroyed. Defendant has advanced no argument beyond mere speculation that the physical presence of the hat and jacket could have offered any exculpatory value. Absent any bad faith by the State, the trial court properly denied defendant's motion to dismiss and we find no abuse of discretion.

¶ 37 Next, defendant argues that his conviction for AHC cannot stand because one of the predicate offenses was legally insufficient. Specifically, defendant contends that the AUUW conviction offered by the State as a predicate offense to support the AHC charge is void under *People v. Aguilar*, 2013 IL 112116. However, the Illinois Supreme Court's recent decision in *People v. McFadden*, 2016 IL 117424, requires the affirmance of defendant's AHC conviction.

¶ 38 In *McFadden*, the defendant was convicted of unlawful use of a weapon by a felon (UUWF) for possessing a firearm after having a prior conviction for AUUW. *McFadden*, 2016 IL 117424, ¶ 1. On appeal, the defendant argued that his UUWF conviction should be vacated because it was predicated on his prior AUUW conviction, which was entered under the section of

the statute that was held facially unconstitutional in *Aguilar*, and thus, the State failed to prove all of the elements of the offense. *Id*. ¶ 13.

¶ 39 The appellate court agreed with the defendant and vacated the defendant's UUWF conviction on the basis of *Aguilar*. *People v. McFadden*, 2014 IL App (1st) 102939. However, the supreme court reversed, finding:

> "It is axiomatic that no judgment, including a judgment of conviction, is deemed vacated until a court with reviewing authority has so declared. As with any conviction, a conviction is treated as valid until the judicial process has declared otherwise by direct appeal or collateral attack. Although *Aguilar* may provide a basis for vacating defendant's prior 2002 AUUW conviction, *Aguilar* did not automatically overturn that judgment of conviction. Thus, at the time defendant committed the UUW by a felon offense, defendant had a judgment of conviction that had not been vacated and that made it unlawful for him to possess firearms." *Id.* ¶ 31.

¶ 40 The supreme court relied largely on the United States Supreme Court's holding "that under a federal felon-in-possession-of-a-firearm statute, a constitutionally infirm prior felony conviction could be used by the government as the predicate felony." *Id*. ¶ 22 (citing *Lewis v. United States*, 445 U.S. 55, 65 (1980)). *McFadden* approvingly cited *Lewis*' reasoning in holding that an AUUW conviction subject to vacatur under *Aguilar* may still serve as a predicate for a UUWF conviction.

¶ 41 The court found that, although the defendant could seek to vacate his prior conviction for AUUW under the void *ab initio* doctrine based on the holding of *Aguilar*, under the UUWF statute, he was still required to clear his felon status prior to obtaining a firearm. *Id*. at ¶ 37. Accordingly, the court concluded that the defendant's prior conviction for AUUW properly served as proof of the predicate felony conviction for UUWF. *Id*.

¶ 42 The reasoning in *McFadden* applies equally to the offense of AHC, where, "the State need only prove the fact of the prior convictions of enumerated offenses [citations], just as the State need only prove the fact of a prior felony conviction to support a UUWF conviction." *People v. Perkins*, 2016 IL App (1st) 150889, ¶ 7.

¶ 43 Here, as in *McFadden*, defendant's prior AUUW conviction had not been vacated prior to his AHC conviction. Therefore, it could properly serve as a predicate for those convictions. *Id*. Defendant's failure to have a court vacate his prior AUUW conviction on grounds that it was unconstitutional is fatal to his challenge to his "felon-in-possession" convictions. *Id.* ¶ 9 (citing *Lewis*, 445 U.S. at 60-62). Since the State proved beyond a reasonable doubt that defendant possessed a firearm and was convicted of felonies properly serving as the predicate offenses for his AHC conviction, we affirm the ruling of the trial court finding defendant guilty.

¶ 44 Defendant argues that we need not follow *McFadden* because it conflicts with the United States Supreme Court decision in *United States v. Bryant*, _____, 136 S. Ct. 1954 (2016), which he asserts are binding authority that mandate that his convictions be vacated. However, we are bound by our supreme court's decisions and are thus compelled to adhere to the holding in *McFadden*. *People v. Fountain*, 2012 IL App (3d) 090558, ¶ 23. Moreover, we find defendant's reliance on *Bryant* to be misplaced. In *Bryant*, the Supreme Court considered whether prior convictions for domestic assault entered in tribal court without counsel comported with the sixth

amendment when used to enhance a federal charge for domestic assault with two prior convictions of the same. The Court found no constitutional infirmity and affirmed the defendant's conviction. *Bryant*, _____, 136 S. Ct. at 1965-66. Defendant in the instant case has not raised any claim relating to his lack of counsel, and accordingly, *Bryant* has no relevance to this case.

¶ 45 Finally, defendant asserts that his sentence cannot stand where it was erroneously based in part on the aggravating weight placed on his prior AUUW. Specifically, he contends that his sentences of 30 years and 15 years were based on his void *ab initio* conviction for AUUW. *McFadden* again controls.

¶ 46 In *McFadden*, the defendant argued that "the appellate court failed to consider that had the trial court been aware that his 2002 AUUW conviction was unconstitutional, and that he had fewer convictions, the trial court would have likely sentenced him to less than the concurrent 29-year sentences for the armed robberies of the three victims." *McFadden*, 2016 117424, ¶ 40. The supreme court held, "[w]e reiterate that the constitutional invalidity of defendant's 2002 AUUW conviction is not confirmed by the record in this case. Nevertheless, even if it was constitutionally infirm, the record adequately demonstrates that the weight placed on the 2002 AUUW conviction was not significant and did not warrant a new sentencing hearing." *Id.* ¶ 41.

¶ 47 Here, the trial court made no specific mention of defendant's prior AUUW conviction at sentencing. The court made the following findings before imposing its sentences:

> "I will consider all of the evidence that I heard during the course of trial, which I feel firmly shows the defendant committed the offense of armed robbery in question. He also possessed the

> predicate weapon in question in this case. Proof of that beyond a reasonable doubt. I concur with the jury completely.
>
> I also considered the presentence investigation report that I have reviewed in its entirety and indicates these prior convictions that we mentioned earlier, period of incarcerations are relevant. Also, mentioned he was originally from the area of Lansing, Illinois. Has some siblings, his mother and father. Doesn't seem like he grew up in a really impossible circumstance. It looks like it was a good home.
>
> I considered all of the evidence in aggravation, mitigation, the statutory factors in aggravation and mitigation, the evidence, the financial impact of incarcertation, the arguments the attorneys have made that I heard moments ago, and of course the defendant's words, the last words that I heard.
>
> With this background, I believe it is important to sentence the defendant to a serious term of imprisonment, one that reflects the fact that he has been convicted of the same thing the past and one that reflects the seriousness of the offense in this case. Two women were robbed at gunpoint."

¶ 48 The trial court did not place significant weight on defendant's prior AUUW conviction in imposing his sentence, but instead considering all of the evidence, both aggravating and mitigating, and found the facts of the armed robbery as well as his prior armed robbery

conviction most significant. Under *McFadden*, we find no basis to remand for a new sentencing hearing.

¶ 49 Based on the foregoing reasons, we affirm the decision of the circuit court of Cook County.

¶ 50 Affirmed.