

2018 IL App (1st) 151651-U

No. 1-15-1651

Order filed May 1, 2018

Second Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 14 CR 12850
)	
CARLOS ANDRADE,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge, presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Hyman and Mason concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction and sentence for aggravated battery with a firearm is affirmed over his contentions that the State failed to prove beyond a reasonable doubt that he was accountable for his codefendant's actions and that the trial court based its sentencing decision on facts that were not supported by the evidence.

¶ 2 Following a bench trial, defendant Carlos Andrade was convicted, under a theory of accountability, of aggravated battery with a firearm (720 ILCS 5/12-3.05(e)(1) (West Supp. 2013)) and sentenced to 10 years' imprisonment. Defendant appeals, contending that the State

failed to prove beyond a reasonable doubt that he was legally accountable for his codefendant's actions and that the trial court based its sentencing decision on unproven facts which increased his level of culpability in the offense. For the reasons set forth herein, we affirm.

¶ 3 Defendant and co-defendant Jovany Sarabia¹ were charged by information with two counts of attempt first degree murder, one count of aggravated battery with a firearm, and one count of aggravated discharge of a firearm following a shooting incident which injured Daniel Camarena. Defendant waived his right to a jury trial, and the case proceeded to simultaneous, but severed, bench trials.

¶ 4 Daniel Camarena testified that, at 4:30 a.m. on June 28, 2014, he and his friend Vincente Martinez were walking north on South Karlov Street, which he knew to be within the territory of the Two-Six street gang. While walking northbound on the east side of the street, Camarena heard a car door open and slam shut, but was unable to see the vehicle. He then saw a red Cavalier with a large dent on the driver's side turn southbound on Karlov. Camarena saw that the Cavalier contained passengers, but was unable to see any of their faces. After turning southbound on Karlov, the Cavalier made a left turn and stopped in the mouth of an alley behind Camarena and Martinez. Shortly thereafter, a man, whom Camarena described as short, and who was walking southbound on their side of the street, approached them, displayed a gun, and started firing. Camarena was not able to see the shooter's face because it was obscured by the gun and the dark hat which the shooter was wearing. Camarena testified that the shooter was 15 feet away from them when he started firing, and the red Cavalier in the alley was 35 feet away. A bullet struck Camarena in the upper right arm.

¹ Sarabia, who was alleged to be the gunman during the incident, was charged with four additional counts of attempt first degree murder.

¶ 5 After the shooting, Camarena saw the shooter run toward the alley. Camarena ran home to call the police. After receiving treatment at a hospital, police asked Camarena to return to the alley on Karlov. In the alley, he identified a red Cavalier as the vehicle he had seen drive past him and park in the mouth of the alley. A detective showed Camarena photographs of possible suspects, but he was unable to make an identification.

¶ 6 On cross examination, Camarena testified that he and Martinez had been members of the Two-Six street gang and that they had been together for 15 minutes before the shooting occurred. He also testified that he did not hear anyone in the Cavalier yell “Two-six killer” or “darkside killer” before the shooting.

¶ 7 Cynthia Delgado testified that, on June 28, 2014, she received a phone call from defendant, whom she knew to be a member of the Latin Kings street gang, inviting her to a party on 30th Street. Delgado drove to the party in a red Cavalier. At the party, Delgado met Sarabia for the first time. Delgado left the party with defendant, and the two went to a nearby garage for 30 minutes. Defendant then drove Delgado back to the party in the red Cavalier. When they arrived back at the party on 30th Street, Delgado remained in the passenger seat of the Cavalier while defendant exited the car to speak with his friends and Sarabia. After the men spoke for five minutes, defendant, Sarabia, and a man that Delgado did not know, got into the Cavalier. Delgado later learned that the man’s last name was Hernandez. Defendant told Delgado that they were going to pick up a person who was drunk, and drove her car to South Karlov Street.

¶ 8 As the group drove on Karlov, they passed two men who were walking northbound on the street. Delgado testified that no words were exchanged between the occupants of the car and the men on the street. Defendant then made a right turn, drove “halfway up the block,” and let

Sarabia out of the car. As Sarabia got out of the car, defendant told him to “go through the alley.” Defendant told Delgado that Sarabia was getting out of the car “to get his boy because they were walking right there, those two guys.” Defendant then made a U-turn in the street, turned back on to Karlov, and drove slowly southbound. Defendant had his window open and yelled “gang stuff” to the men walking on the side of the street. Delgado heard defendant yell “Two-Six killer, dark side or something like that.” The two men then turned toward the car as if they were going “to do something,” and defendant drove to the mouth of the alley. When the car stopped in the mouth of the alley, Delgado heard gunshots. When the shots stopped, Delgado observed a man running toward the car. When the man got into the car, she realized that it was Sarabia. Sarabia was wearing a black hat and had a black object in his hand. Delgado initially did not know what the object was, but “figured out it was a gun” because of the shooting that had just occurred. Defendant then drove the car to the other end of the alley and told Sarabia to hide the gun. Sarabia exited the vehicle and was about to place the gun on the ground when defendant told him to place it inside of a garbage can.

¶ 9 After Sarabia placed the gun into a garbage can, defendant drove away from the alley and let Sarabia and Hernandez out of the vehicle on Spaulding Avenue. Defendant then drove Delgado back to the party and told her not to tell anyone what had happened. At the party, Delgado observed defendant walking back and forth “like he was kind of mad or he was like worried about something.” She told defendant that she wanted to go home, and that a man named Anthony had asked her for a ride to his house. Defendant, Delgado, and Anthony got into the Cavalier and defendant drove back to the alley on Karlov. Several police officers were in the alley, and the officers stopped the Cavalier when defendant attempted to back out of the alley.

The officers ordered the occupants out of the Cavalier, and Delgado was taken to a police station, where she spoke with Detective Wilborn.

¶ 10 On cross-examination, Delgado testified that she drank beer and smoked marijuana at the party, but stated that that she was not drunk or “high” at the time of the shooting. She testified that defendant did not tell Sarabia to place “a gun” in the garbage can. She testified that defendant told her that he needed to go back to the alley because he needed to get “it” back since he did not “want his boys to find out.” Delgado acknowledged that she did not tell Detective Wilborn or the Assistant State’s Attorney (ASA) that she spoke with that night that defendant told her that he needed to get “it” back. She stated that she did not tell the detective and the ASA because she was nervous and defendant had told her not to say anything.

¶ 11 Officer Richard Pruger testified that, on the morning of June 28, 2014, he responded to a call of a person shot at 2433 South Karlov Avenue. There, Pruger spoke with Camarena and Martinez and learned that a red Cavalier or red Saturn car had circled the block before they were shot at. Pruger relayed this message over police radio.

¶ 12 Officer Olszewski testified that, on June 28th 2014, he was working in the alley in the vicinity of 4027 West 24th Place, and had a conversation with a person who lived in the neighborhood. Based on the information that he learned in the conversation, he opened a garbage can in the alley and found a blue steel revolver. He then turned the scene over to Officer Alvarez until other detectives arrived.

¶ 13 Officer Romero Alvarez testified that, on June 28, 2014, he responded to the area of 2433 South Karlov Avenue to investigate a shooting. While searching the street and nearby alley for cartridge casings, Alvarez learned from another officer that a gun had been found in the alley.

Alvarez relocated to the alley, where he observed a revolver, which had a defaced serial number, lying in a garbage can. As he guarded the area until an evidence technician could recover the revolver, Alvarez observed a red car turn into the alley. Officers stopped the car before it was able to reverse out of the alley. He indentified defendant as the driver of the car. Defendant and the other occupants of the car, Cynthia Delgado and Anthony Schaok, were transported to a police station.

¶ 14 Officer Michael Mazurski testified that, on June 28, 2014, he was working as an evidence technician. In an alley located near 4015 West 24th Place, Officer Alvarez directed him to a garbage can which contained a handgun. Mazurski recovered the handgun and inventoried it according to Chicago Police procedures. The revolver contained six spent rounds, and its serial number was defaced.

¶ 15 Detective Wilborn testified that, on June 28, 2014, he was assigned to investigate the shooting in question. During the course of the investigation, Wilborn relocated to the alley located near 4015 West 24th Place. There, he spoke with Camarena and showed him a photo-array containing photographs of the occupants of the red Cavalier that had been stopped in the alley. Camarena was unable to identify the occupants. After an unsuccessful attempt to recover video footage from a security camera on a nearby garage, Wilborn relocated to the police station where the occupants of the red Cavalier were in custody.

¶ 16 At the police station, Wilborn spoke with Schaok and Delgado about the shooting. Schaok showed him a Facebook photograph of Sarabia. He then spoke with defendant, who, after waiving his *Miranda* rights, identified the photograph of Sarabia. Defendant told Wilborn that he and Delgado had left the party on 30th Street and that, as he was driving from the party,

he “came upon” Sarabia and another man, whom he did not know. He picked up the men and drove them to the area of 26th Street and Pulaski Avenue, which he knew to be Two-Six gang territory. Defendant admitted to being a member of the Latin Kings street gang. He told Wilborn that he did not go to the area looking for trouble or confrontation, but that he just thought it “would be fun to show the young men some transsexuals.” He then told Wilborn that Sarabia told him to pull the car over so that he could urinate. Defendant let Sarabia out of the car and drove to the mouth of a nearby alley. After defendant heard gunshots, Sarabia ran back to the car and defendant drove eastbound through the alley. He stopped the vehicle so that Sarabia could get rid of the handgun. Defendant drove back to the party, where he stayed for an hour. He then drove back to the scene of the shooting to “see what damage was done” and to retrieve the handgun because losing the gun would have been a violation of gang rules. Based on this information, Wilborn initiated an investigative alert for Sarabia, who was arrested on June 29, 2014

¶ 17 On cross-examination, Wilborn testified that, during the course of the investigation, he learned that Camarena and Martinez were members of the Two-Six Street gang. He also testified that his general progress report indicated that defendant returned to the alley because he wanted to see what happened, and not to retrieve the gun. His general progress report also did not indicate that defendant was afraid of losing the gun because it would be a violation of gang rules.

¶ 18 Anthony Schaok testified that he had a pending criminal damage to property case, but that the State had not made a deal in that case in exchange for his testimony in the instant case. He testified that on the night of June 27, 2014, he attended a party in the area of 32nd Street and Kedzie Avenue and remained there until 2 a.m. After he left the party, he relocated to the

intersection of Sawyer Street and 30th Street, where defendant, Sarabia, and other people were hanging out and “partying.” At some point during the night, two guys and a girl named Cynthia drove Sarabia home. Schaok testified that he was not sure whether defendant left the party with Cynthia and Sarabia because he “was partying” at the time and not paying attention. Cynthia later returned to the party, but he could not remember if any other person returned with her.

¶ 19 Schaok testified that, at approximately 5:00 a.m., defendant and Cynthia agreed to give him a ride home. Instead of driving him home, defendant drove to an alley where police officers had put up red and yellow crime scene tape. When they turned into the alley, officers approached the car and arrested them. At the police station, Schaok spoke with Detective Wilborn and identified a photograph of Sarabia. He testified that Wilborn had retrieved the photograph from Facebook, and that he did not personally access Facebook or go to Sarabia’s Facebook page.

¶ 20 The State recalled officer Wilborn, who testified that Schaok had told him that defendant, Sarabia, and Cynthia Delgado had left the party with another unknown male. The State then rested its case-in-chief, and the trial court denied defendant’s motion for a directed verdict. Defendant rested without presenting evidence.

¶ 21 After closing argument the trial court found defendant and Sarabia not guilty of attempted murder of Camarena and aggravated discharge of a firearm towards Martinez, but found them guilty of aggravated battery with a firearm of Camarena. In explaining its findings the trial court noted:

“THE COURT: looking at all the totality, there’s not a question in my mind that this shooting happened; that the shooter[] came out of this red Cavalier, that it happened the way that Ms. Delgado, albeit in a circumstantial manner described it, that Mr. Sarabia

is the shooter, and that [defendant] was part of that. He directed where the gun should be put, and then he went back to try to retrieve the gun so that it wouldn't be recovered, it wouldn't get lost from the gang.”

¶ 22 Defendant filed a motion for a new trial. In denying the motion, the trial court stated:

“THE COURT: I recall the testimony and not only was he the driver during the drive-by shooting, but when a gun was disposed of, he had concern that the gun would be found and there would be some kind of gang violation if the gun was discovered missing. And he went back and preserved the gun because he was worried about the gang being mad at him for losing the gun. I believe he participated in the entirety of this event. But for his driving, being a driver for a drive-by shooting, it may not have occurred the way it did.”

¶ 23 Prior to sentencing, the court ordered a presentence investigation report (PSI). Defendant's PSI reflects that defendant's criminal background consisted of: a 2007 juvenile adjudication for possession of a stolen motor vehicle for which he was sentenced to 18 months' probation; a 2013 conviction for reckless conduct for which he was sentenced to 12 months' probation; and a 2011 conviction for aggravated unlawful use of a weapon for which he received 24 months' probation, which he violated in 2012, and was resentenced to one year's imprisonment.

¶ 24 At sentencing the court heard argument in aggravation and mitigation. In aggravation, the State argued that defendant's criminal background contained a prior firearm conviction and that the instant offense was gang related. It also stated that Camarena was still complaining of pain in his arm but was not undergoing physical therapy for his injury. In mitigation, the defense

argued that defendant was working as a day laborer before he was incarcerated, that he had been “violated out” of the Latin Kings, and that he had not been the shooter. In allocution, defendant apologized to his mother.

¶ 25 The court sentenced defendant to 10 years’ imprisonment. In announcing its decision, the court explained:

“THE COURT: Look, this young man was committing crimes since he was a juvenile. Convicted of possession -- found delinquent, I should say, of possession of a stolen motor vehicle, gun, he was on probation, couldn’t make the probation, went to the penitentiary.

As an adult then he is involved in this after that, after getting the penitentiary. It’s a drive-by shooting. You can get up to 30 years in the penitentiary. I will not give him the maximum sentence, but he has been around the block before.

I will note that there was a premeditated portion of this case. This is not impulsive. They were looking to find somebody to shoot.”

¶ 26 On appeal, defendant first argues that the State failed to prove beyond a reasonable doubt that he was accountable for the actions of Sarabia because there was no evidence that he shared Sarabia’s specific intent to commit aggravated battery or that he was a part of a common criminal design.

¶ 27 The due process clause of the fourteenth amendment protects defendants against conviction in state courts except upon proof beyond a reasonable doubt of every fact necessary to constitute the charged crime. *People v. Brown*, 2013 IL 114196, ¶ 48; *Jackson v. Virginia*, 443

U.S. 307, 315-16 (1979). When ruling on a challenge to the sufficiency of the evidence, a reviewing court “ ‘is not required to search out all possible explanations consistent with innocence or be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. On the contrary, we must ask, after considering all of the evidence in the light most favorable to the prosecution, whether the * * * evidence [in the record] could reasonably support a finding of guilt beyond a reasonable doubt.’ ” *People v. Grant*, 2014 IL App (1st) 100174-B, ¶ 24 (quoting *People v. Wheeler*, 226 Ill. 2d 92, 116-17 (2007)). In doing so, we must draw all reasonable inferences from the record in favor of the prosecution, and “ ‘[w]e will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant’s guilt.’ ” *People v. Lloyd*, 2013 IL 113510, ¶ 42 (quoting *People v. Collins*, 214 Ill. 2d 206, 217 (2005)).

¶ 28 As relevant here, a person commits the offense of aggravated battery with a firearm when, in committing a battery, he knowingly discharges a firearm and causes injury to another person. 720 ILCS 5/12-3.05(e)(1) (West Supp. 2013). In Illinois, a person is legally accountable for the conduct of another when “either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense.” 720 ILCS 5/5-2 (c) (West 2014).

¶ 29 “[T]o prove that a defendant possessed the intent to promote or facilitate the crime, the State may present evidence that either (1) the defendant shared the criminal intent of the principal, or (2) there was a common criminal design.” *People v. Fernandez*, 2014 IL 115527, ¶ 13. When two or more persons engage in a common criminal design or agreement, any acts

committed by one party in furtherance of that common design are considered to be the acts of all parties to the common design and all parties are equally responsible for the consequences of those further acts. 720 ILCS 5/5-2(c) (West 2014). “Words of agreement are not required to prove a common design or purpose between codefendants; a common design may be inferred from the circumstances surrounding the crime.” *People v. Fleming*, 2014 IL App (1st) 113004, ¶ 52. Absent other circumstances indicating a common design, presence at the scene and flight therefrom do not constitute *prima facie* evidence of accountability; however, they do constitute circumstantial evidence which may tend to establish a defendant’s guilt. *People v. Cowart*, 2017 IL App (1st) 113085-B, ¶ 34.

¶ 30 Defendant does not dispute that Sarabia was the shooter. Rather he contends that the State did not present sufficient evidence to prove beyond a reasonable doubt that he shared Sarabia’s specific intent to commit aggravated battery or that he was a part of a common criminal design.

¶ 31 Here, we find that the evidence presented at trial, construed in a light most favorable to the State, could lead any rational trier of fact to conclude that there was a common criminal design. Cynthia Delgado testified that she, defendant, Sarabia, and Hernandez left the party after defendant and Sarabia had been talking near the car for a period of five minutes. Delgado testified that she knew defendant to be a member of the Latin Kings street gang, and defendant admitted to Detective Wilborn that he was a member of the Latin Kings.

¶ 32 Before the shooting, defendant told Delgado that they were going to pick up a drunk friend who needed a ride. Defendant told Detective Wilborn that he had driven to the area around Karlov Street because he thought it “would be fun to show the young men some transsexuals”

and that Sarabia left the Cavalier because he needed to urinate. In the area of Karlov Street, which was within the territory of the Two Six street gang, a rival of the Latin Kings, defendant drove past Camarena and Martinez. After defendant drove past them, Sarabia exited the car and defendant instructed him to go through the alley. Defendant told Delgado that the friend that they came to pick up was one of the men walking on Karlov Street. Delgado testified that defendant then drove southbound on Karlov, yelled “gang stuff” to Camarena and Martinez, and turned into the mouth of an alley to wait for Sarabia. As defendant and Delgado waited in the car, Delgado heard gunshots. Sarabia ran back to the car and defendant then drove down the alley. Defendant directed Sarabia to place an object, which Delgado believed to be a gun, into a garbage can. Defendant told Delgado not to tell anyone what had happened and drove back to the party. After the party, defendant drove back to the alley, telling Delgado that he needed to retrieve the item because he did not “want his boys to find out.” This evidence, and the reasonable inferences therefrom, was sufficient to for a rational trier of fact to conclude that defendant and Sarabia were a part of a common criminal design and, therefore, that defendant was accountable for Sarabia’s actions.

¶ 33 In reaching this conclusion, we are not persuaded by defendant’s reliance on *People v. Taylor*, 186 Ill. 2d 439 (1999), and *People v. Estrada*, 243 Ill. App. 3d 177 (1993). Here, unlike in *Taylor*, the evidence does not suggest that defendant did not know that Sarabia was armed, nor was the shooting in this case the result of an “unforeseeable, spontaneous traffic altercation.” *Taylor*, 186 Ill. 2d at 448. Moreover, unlike in *Estrada*, here defendant did not exit the car. See *Estrada*, 243 Ill. App. 3d at 185 (the defendant’s attempt to intimidate the victim by exiting his vehicle with a tire-iron before his co-defendant shot the victim made “it is less likely” that the

defendant knew that co-defendant intended to fire at the victim). Rather, defendant waited for Sarabia inside the car, which was parked at the mouth of an alley that defendant had, prior to the shooting, directed Sarabia to go through.

¶ 34 Defendant next argues that the trial court erred by basing his sentence on unproven facts. Specifically, defendant argues that the court's statements that he was involved in a "drive-by" shooting and that the incident was premeditated were not supported by the evidence at trial.

¶ 35 In setting forth this argument defendant acknowledges that, while trial counsel filed a motion to reconsider sentence as excessive "in view of [his] criminal background and the nature of his participation in the offense," counsel did not challenge what defendant now considers to be the trial court's reliance on unproven facts. See *People v. Hillier*, 237 Ill. 2d 539, 544 (2010) ("It is well settled that, to preserve a claim of sentencing error, both a contemporaneous objection and a written postsentencing motion raising the issue are required"). Nonetheless, he argues that we may review this issue under either prong of the plain error doctrine.

¶ 36 To establish plain error in the context of sentencing, a defendant must show that a clear or obvious error occurred and "that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing." *Hillier*, 237 Ill. 2d at 545. Under either prong of the plain error doctrine, the burden of persuasion remains on the defendant. *Id.* A reviewing court conducting plain error analysis must first determine whether an error occurred, as "[w]ithout reversible error, there can be no plain error." *People v. McGee*, 398 Ill. App. 3d 789, 794 (2010). For the following reasons, we find no error here.

¶ 37 We initially note that the parties disagree as to the correct standard of review. Defendant urges us to employ a *de novo* standard of review. See *People v. Arbuckle*, 2016 IL App (3d) 121014-B, ¶ 39 (where the defendant contended that the trial court improperly considered a factor inherent in the offense as an aggravating factor); *People v. Mauricio*, 2014 IL App (2d) 121340, ¶ 15 (where the defendant contended that the trial court improperly considered the victim’s personality traits during sentencing). The State responds that the court’s sentence should be reviewed for an abuse of discretion. We agree with the State.

¶ 38 In this case, unlike in *Arbuckle* and *Mauricio*, the issue presented is not a question of law. Rather, defendant’s argument that the court’s sentence was based on its recitation of facts which were not proven by the evidence presented at trial presents a question of fact, and is therefore more appropriately reviewed under an abuse of discretion standard. See *People v. Cotton*, 393 Ill. App. 3d 237, 265 (2009) (reviewing a claim that the trial court misstated facts during sentencing for an abuse of discretion). We note, however, that the outcome would be the same under either standard of review.

¶ 39 A trial court has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference on review. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). However, when sentencing a defendant, a court “ ‘must exercise care to insure the accuracy of information considered.’ ” *People v. Jackson*, 149 Ill. 2d 540, 549 (1992) (quoting *People v. Adkins*, 41 Ill. 2d 297, 300 (1968)). Apart from showing that a court misstated evidence at sentencing, a defendant must demonstrate that the court “relied on the particular improper fact” when it sentenced the defendant. *People v. Valadovinos*, 2014 IL App (1st) 130076, ¶ 47. Even if the trial court considers a misstated fact, remand is not required if the

weight given to the factor “is so insignificant that it did not lead to a greater sentence.” *Cotton*, 393 Ill. App. 3d at 266. “[A] reviewing court should not focus on a few words or statements made by the trial court, but must consider the record as a whole.” *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010).

¶ 40 Here, defendant argues that the court’s use of the term “drive-by shooting,” during sentencing, demonstrates that it based his sentence on its belief that Sarabia was inside of the car during the shooting.

¶ 41 After considering the record as a whole, we find that the trial court did not err in sentencing defendant to 10 years’ imprisonment. The record shows that, in fashioning a sentence, the trial court primarily focused on defendant’s criminal history. In doing so, the court noted that defendant had both juvenile adjudications and criminal convictions in his background. It also noted that defendant had served prison time after violating probation, and resumed criminal activity by his involvement in the instant case. Although in recounting the facts of the case, the court described the shooting as a “drive-by,” we cannot say that this description of the shooting was erroneous. While the term “drive-by” may commonly refer to a shooting during which the gunman does not leave the confines of a vehicle, it was not unreasonable for the court to use this term to describe a shooting where, as here, the gunman is driven to a location, momentarily gets out of the vehicle, shoots the victim, and immediately returns to the vehicle to be driven away. In any event, even if the trial court mistakenly believed that Sarabia was still in the vehicle at the time of the shooting, defendant is unable to demonstrate that the court relied on this factor when it sentenced him where the record, as a whole, shows that the court dedicated the vast majority of its sentencing pronouncement to a discussion of defendant’s criminal history. See *People v.*

Wilson, 2016 IL App (1st) 141063, ¶ 13 (A defendant's criminal history, and the fact that he was not deterred by previous lenient sentences, may support a sentence above the minimum).

¶ 42 We are likewise not persuaded by defendant's arguments that: the trial court's comments about the offense being premeditated were not supported by the evidence; and that the court's statement at sentencing regarding premeditation is contrary to its finding at the close of trial that "Sarabia was the shooter and that [defendant] was a part of that." As mentioned, the evidence presented at trial was sufficient for any rational trier of fact to determine that defendant and Sarabia were a part of a common criminal design. As such, the court's comment that the offense was premeditated was in reference to defendant and Sarabia acting together in committing the offense and was in no way contradictory to the court's comment that "defendant was part of that." Accordingly, we find that the trial court did not abuse its discretion when it sentenced defendant to 10 years' imprisonment for aggravated battery with a firearm.

¶ 43 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 44 Affirmed.