2018 IL App (1st) 160819-U
Order filed: September 21, 2018

FIRST DISTRICT
Fifth Division

No. 1-16-0819

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. 15 CR 14605
	)	
DAVON YOUNG,	)	Honorable
	)	Nicholas Ford,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hoffman and Hall concurred in the judgment.

O R D E R

¶ 1 *Held*: We affirmed defendant's conviction and sentence for aggravated robbery over his contentions that the State failed to prove him guilty beyond a reasonable doubt and that the trial court abused its discretion in not sentencing him to probation.

¶ 2 Following a bench trial, defendant-appellant, Davon Young, was found guilty of aggravated robbery in violation of 720 ILCS 5/18-1(b)(1) (West 2014), and sentenced to four years' imprisonment with a recommendation of boot camp. On appeal, defendant contends that

the State failed to prove him guilty beyond a reasonable doubt and that the trial court abused its discretion in sentencing him to a prison term instead of probation. We affirm.[1]

¶ 3 Defendant was charged by information with one count of armed robbery (720 ILCS 5/18-2(a)(1) (West 2014)), and one count of aggravated robbery (720 ILCS 5/18-1 (b)(1) (West 2014)).

¶ 4 The facts adduced at trial show that, on August 27, 2015, Haltham Al Qaisi was working a 12-hour shift at Max Quick Mart located at 6005 South Ashland Avenue in Chicago (store). Defendant came into the store while Mr. Al Qaisi was working behind the counter. There were no other customers in the store. The store security camera was not recording at the time. Mr. Al Qaisi knew defendant because he was a regular customer. He also knew defendant's mother and that defendant lived nearby.

¶ 5 Defendant walked up to Mr. Al Qaisi, said "give me that s***," and then grabbed at the cash register and Mr. Al Qaisi's phone. Defendant told Mr. Al Qaisi: "no you owe me a dollar," and then lifted his shirt to reveal what Mr. Al Qaisi believed to be a handgun. Defendant never removed the gun from his waistband. Defendant took some Little Debbie snack cakes and left the store. Mr. Al Qaisi did not call the police because he was going to talk to defendant's mother about the incident.

¶ 6 Approximately ten to fifteen minutes later, defendant returned to the store demanding money and more merchandise. He again lifted his shirt, revealing the handgun, and attempted to

[1] In adherence with the requirements of Illinois Supreme Court Rule 352(a) (eff. July 1, 2018), this appeal has been resolved without oral argument upon the entry of a separate written order stating with specificity why no substantial question is presented.

take money from Mr. Al Qaisi's hand. Defendant took more Little Debbie snack cakes and chips and left the store. When Mr. Al Qaisi called the owner of the store, he was instructed to call the police. A short time later, defendant returned to the store carrying a clear backpack. Defendant went to the section where the Little Debbie snack cakes were located, proceeded to fill the backpack with the snack cakes, and then left the store. Mr. Al Qaisi called the police and, when they arrived, he gave a description of defendant and told them that defendant lived nearby.

¶ 7 On cross-examination, Mr. Al Qaisi acknowledged that, on one occasion, defendant came into the store to buy a Red Bull beverage. He gave defendant a Link card to buy a Red Bull at a different store. Mr. Al Qaisi admitted that the store did not have a Link machine. Mr. Al Qaisi acknowledged that, when he phoned the police, he told the dispatcher that he been robbed only once but, when the officers arrived, he told them that defendant had actually robbed the store three times that day. Mr. Al Qaisi identified photographs of the handgun that defendant had revealed, as well as the backpack and the snack cakes which were taken.

¶ 8 Chicago police officer Williams testified that on August 27, 2015, he received a call at approximately 6 p.m. of a man with a gun in the area of 6000 South Ashland Avenue and a description of the offender was given. Officer Williams knew the person who matched the description, so he and his partner proceeded to defendant's residence at 5900 South Justine Street. There, the officer observed defendant sitting on the front porch, eating a Little Debbie snack cake with a clear backpack at his feet. The backpack contained a number of Little Debbie snack cakes. Officer Williams asked defendant to stand and did a protective pat-down search. He recovered a handgun from the front waistband of defendant's pants. Officer Williams

described the handgun as a "replica BB pistol," and not a real gun. Officer Williams transported defendant to the store where Mr. Al Qaisi identified defendant, the handgun, the clear backpack, and the snack cakes.

¶ 9 On cross-examination, Officer Williams acknowledged that defendant's residence was located about one-half block from the store and he admitted that the handgun recovered from defendant was made of plastic. He acknowledged that his police report indicated that defendant came into the store on only one occasion, and that defendant did not attempt to take Mr. Al Qaisi's phone.

¶ 10 Chicago police detective, Darrel McClay, testified that he spoke to defendant at the 7th District police station. After advising defendant of his *Miranda* rights, defendant told Detective McClay that he had an arrangement with Mr. Al Qaisi. Specifically, Mr. Al Qaisi had given defendant a Link card to purchase a Red Bull at a different store. When defendant attempted to purchase a Red Bull at another store, he found that the Link card Mr. Al Qaisi had given him had insufficient funds, so defendant had to use his own money to pay for the Red Bull. Sometime later, when defendant had not been refunded his money, he decided to "go into the store and take matters in[to] his own hands." Defendant admitted to Detective McClay that the BB gun was in his possession at the time of his arrest.

¶ 11 On cross-examination, Detective McClay acknowledged that there was no surveillance footage of the store robberies because the camera was not operating. Detective McClay admitted that defendant never admitted that he revealed the BB gun, nor did he admit to grabbing for Mr. Al Qaisi's phone. Mr. Al Qaisi told Detective McClay that defendant came into the store on

three separate occasions and, on at least one occasion, defendant grabbed for his phone and the cash register.

¶ 12 The State rested and defendant's motion for directed finding was denied. Defendant did not present any evidence. The court found defendant guilty of aggravated robbery. Defendant's motion for new trial was denied.

¶ 13 During sentencing the State argued in aggravation that: defendant had two prior juvenile adjudications which resulted in sentences of probation; he violated the terms of his probation on each of his adjudications; and his probations were ultimately terminated unsatisfactorily. The State urged that defendant was not a candidate for probation.

¶ 14 In mitigation, trial counsel argued that defendant had obtained his General Equivalency Diploma and did not have any adult convictions. Counsel asserted that defendant was a ward of the State and was in custody of the Department of Children and Family Services (DCFS), and that he has a dedicated DCFS case worker who was present in court for every court date and in communication with trial counsel. Counsel asked that, given defendant's age (19), he should be sentenced to probation. Defendant's DCFS case worker testified that she had been working with defendant for a few years and that defendant's mother was staying with family members.

¶ 15 In allocution, defendant stated: "[T]his ain't juvenile. This is grown. This can effect (sic) me a long period of time. I think I am ready to do what I need to do to succeed in life."

¶ 16 In sentencing, the court, in part, noted that it "recall[ed] the evidence *** presented at trial and presentence investigation ***, evidence offered in aggravation and mitigation, statutory factors and the impact of incarceration, arguments of the attorneys, [and the] impact on the

victim and defendant's allocution ***." The court ultimately sentenced defendant to four years' imprisonment with a recommendation of boot camp. Defendant appeals.[2]

¶ 17 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt. The standard of review on a challenge to the sufficiency of the evidence 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 crime beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). This standard is applicable in all criminal cases, regardless whether the evidence is direct, or circumstantial. *People v. Herring*, 324 Ill.App.3d 458, 460 (2001). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Hutchinson*, 2013 IL App (1st) 102332 ¶ 27. When considering the sufficiency of the evidence, it is not the reviewing court's duty to retry the defendant. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). A reviewing court will only reverse a criminal conviction when the evidence is so improbable or unsatisfactory that there remains a reasonable doubt as to the defendant's guilt. *Beauchamp*, 241 Ill. 2d at 8.

¶ 18 In this case, defendant was convicted of aggravated robbery. For the State to sustain defendant's conviction, it was required to prove, beyond a reasonable doubt, that he knowingly took property from a person or presence of another by the use of force or by threatening the

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imminent use of force (720 ILCS 5/18-1(a) (West 2014)), while indicating verbally or by his actions to the victim that he is armed with a firearm or other dangerous weapon. 720 ILCS 5/18-1(b)(1) (West 2014). This offense shall apply, even when it is later determined that he did not possess a firearm or other dangerous weapon in his possession when he committed the robbery. *Id.*

¶ 19 After reviewing the evidence in the light most favorable to the State, we find that a rational trier of fact could have concluded that defendant took property from Mr. Al Qaisi by the threat of force while displaying a replica handgun. Mr. Al Qaisi testified that he had known defendant and defendant's mother. On the day of the incident, defendant came into the store on three separate occasions, took merchandise from the store without paying and, on the last occasion, carried a clear backpack. On two occasions, defendant lifted his shirt to reveal what Mr. Al Qaisi believed to be a handgun. Mr. Al Qaisi eventually called the police and gave them a description of defendant and that defendant lived nearby. Officer Williams was familiar with defendant and, upon learning the description of the suspect, he went to defendant's residence. There, he saw defendant on the porch, eating the snack cakes with a clear backpack containing additional items that he had taken from the store. Officer Williams recovered a replica BB gun from defendant's waistband. Mr. Al Qaisi identified defendant, the BB gun, and the backpack containing the proceeds from the robbery. Defendant made a statement to Detective McClay admitting the BB gun was his and was a gift from a relative. Defendant also told Detective McClay that he had a dispute with Mr. Al Qaisi over money owed to him and he decided to take matters into his own hands. This evidence was not so unreasonable, unsatisfactory, or

improbable such that there remains a reasonable doubt of defendant's guilt. *People v. Schott*, 145 Ill. 2d 188, 203 (1991). Accordingly, we will not reverse defendant's conviction for aggravated robbery.

¶ 20 Defendant, nevertheless, argues that his conviction should be reversed because Mr. Al Qaisi's testimony was improbable and he was significantly impeached by the testimony of Detective McClay. We note that defendant's arguments are, essentially, asking us to reweigh the evidence in his favor and substitute our judgment for that of the trier of fact. It was the responsibility of the trier of fact to determine Mr. Al Qaisi's credibility, the weight to be given to his testimony, and to resolve any inconsistencies and conflicts in the evidence. See *Hutchinson*, 2013 IL App (1st) 102332, ¶ 27. Given its ruling, the court found Mr. Al Qaisi credible and resolved the complained-of inconsistencies of the evidence in favor of the State. In doing so, the trier of fact is not required to disregard the inferences that flow from the evidence, or seek out all possible explanations consistent with a defendant's innocence and raise them to a level of reasonable doubt. *People v. Alvarez*, 2012 IL App (1st) 092119, ¶ 51. We will not reverse a conviction simply because defendant claims that a witness was not credible. *Siguenza-Brito*, 235 Ill. 2d at 229 (it is well-established that the positive and credible testimony of a single witness is sufficient to convict a defendant).

¶ 21 Defendant next contends that the trial court abused its discretion by sentencing him to incarceration without entering a finding that incarceration was necessary for the protection of the public, or that probation would deprecate the seriousness of the offense.

¶ 22 The State responds that defendant has waived his sentencing argument by not raising it in

a written posttrial motion to reconsider sentence and argues that defendant has forfeited this issue by failing to allege, in his brief, that the trial court committed plain error, thus allowing for appellate review.

¶ 23 A careful review of the record shows that, after the court imposed sentence, defendant indicated that he wished to file a motion to reconsider his sentence. However, at the trial court's prompting, defendant proceeded on an oral motion to reconsider. The State did not object to this method of procedure. This court has previously recognized that, "if defendants allege plain error in sentencing, or if defendants orally move to reduce their sentences without objection to this procedure by the State, the reviewing court may address such issues upon appeal despite defendant's failure to file a written postsentencing motion." *People v. Shields*, 298 Ill. App. 3d 943, 950-51 (1998). Hence, we will consider defendant's sentencing argument.

¶ 24 A trial court's sentencing decisions are entitled to great deference on review and a reviewing court will only reverse a sentence when it has been demonstrated that the trial court abused its discretion. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). A trial court has broad discretionary powers in imposing a sentence because it has a superior opportunity "to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). Absent an indication to the contrary, other than the sentence itself, we presume the trial court properly considered all relevant mitigating factors presented. *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 19.

¶ 25 In reviewing a defendant's sentence, this court will not reweigh these factors and

substitute its judgment for that of the trial court merely because it would have weighed these factors differently. *People v. Busse*, 2016 IL App (1st) 142941, ¶ 20. Moreover, a sentence which falls within the statutory range is presumed to be proper, and " 'will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense.' " *People v. Brown*, 2015 IL App (1st) 130048, ¶ 42 (quoting *People v. Fern*, 189 Ill. 2d 48, 54 (1999)).

¶ 26 Here, we find that the trial court did not abuse its discretion in sentencing defendant to four years' imprisonment with a boot camp recommendation. In this case, defendant's aggravated robbery conviction is a Class 1 felony (720 ILCS 5/18-1 (c) (West 2014)); and has a sentencing range of 4 to 15 years' imprisonment (730 ILCS 5/5-4.5-30(a) (West 2014)). A conviction for aggravated robbery is also eligible for probation that should not exceed four years. (730 ILCS 5/5-4.5-30(d) (West 2014)), and eligible for impact incarceration. 730 ILCS 5/5-4.5(c) (West 2014). Accordingly, defendant's 4-year sentence with a recommendation of boot camp was within the permissible statutory range and, thus, is presumed proper. *Sauseda*, 2016 IL App (1st) 140134, ¶ 19. "To rebut this presumption, defendant must make an affirmative showing that the sentencing court did not consider the relevant factors." *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38. Defendant has failed to make such a showing.

¶ 27 Defendant does not dispute that his 4-year sentence fell within the applicable sentencing range. Rather, he argues that the trial court abused its discretion in not complying with section 5-6-1(a)(1), (2) of the Code of Corrections, which states in pertinent part:

"Except where specifically prohibited by other provisions of this Code, the court

> shall impose a sentence of probation or conditional discharge upon an offender unless, having regard to the nature and circumstance of the offense and to the history, character and condition of the offender, the court is of the opinion that:
>
> (1) his imprisonment or periodic imprisonment is necessary for the protection of the public; or
>
> (2) probation or conditional discharge would deprecate the seriousness of the offender's conduct and would be inconsistent with the ends of justice." 730 ILCS 5/5-6-1(a)(1), (2) (West 2014).

¶ 28 Defendant argues that the trial court did not comply with section 5-6-1 because it failed to indicate that he posed a serious threat to the public, or that a sentence of probation would deprecate the seriousness of the offense when it sentenced him to a term of imprisonment.

> "Substantial compliance with section 5-6-1 may exist even if the judge does not specifically say that 'imprisonment is necessary for the protection of the public' or that 'probation or conditional discharge would deprecate the seriousness of the offender's conduct and would be inconsistent with the ends of justice.' If the record demonstrates substantial compliance with this requirement then a reviewing court may alter the sentencing judge's disposition only upon a finding of an abuse of discretion." *People v. Cox*, 82 Ill. 2d 268, 281 (1980)

¶ 29 Here, we find that the trial court substantially complied with section 5-6-1 and did not abuse its discretion in sentencing defendant to four years' imprisonment. Although the court did not specifically enumerate the factors set forth in section 5-6-1, the record shows that the court

was presented with these factors at sentencing and, in imposing sentence, ultimately determined that the seriousness of the offense warranted a four year prison term. At sentencing, the court was presented with defendant's presentence investigation (PSI) report, which included his age and criminal history. In mitigation, defense counsel emphasized defendant's troubled family history and young age. Counsel also stressed defendant's educational achievements and the fact that no one was injured during the robbery. When counsel asked that defendant be sentenced to probation, the State argued that defendant was not a candidate for probation based on his two juvenile adjudications which resulted in violations of his probation. In asking for a prison sentence, the State noted the serious nature of the crime, the threats made to Mr. Al Qaisi, and their obligation to "protect the community and deter others from committing the exact same crime."

¶ 30 In imposing sentence, the court expressly noted that it considered the PSI report and "the evidence offered in aggravation and mitigation, statutory factors and impact of incarceration, arguments of the attorneys, impact on the victim and defendant's allocution." The court also noted that this case was "on the serious nature of the spectrum for adult court." Given this record, we find the court substantially complied with section 5-6-1 and did not abuse its discretion in sentencing defendant to the minimum four-year prison term. *People v. Roberts*, 115 Ill. App. 3d 384, 388-89 (1983) ("Even though the trial court does not expressly recite *** which basis it relied on in refusing to sentence the defendant to probation or conditional discharge, the statutory requirement is satisfied where the record reveals substantial compliance with section 5-6-1(a)(1)-(2)." (citing *People v. Cox*, 82 Ill. 2d 268, 281 (1980)).

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

¶ 32 Affirmed.