2018 IL App (1st) 161822-U

No. 1-16-1822

Order filed December 26, 2018

Second Division

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. 15 CR 15619
	)	
BRONTAY MATLOCK,	)	Honorable
	)	James N. Karahalios,
Defendant-Appellant.	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: We affirm defendant's convictions for possession of a stolen motor vehicle and burglary to auto over his contentions that the State failed to prove him guilty beyond a reasonable doubt; we remand for resentencing where, given the nature of the offenses, defendant's sentence of two concurrent 25-year terms was excessive.

¶ 2 Following a jury trial, defendant Brontay Matlock was convicted of possession of a stolen motor vehicle (625 ILCS 5/4-103(a)(1) (West 2014)) and burglary to auto (720 ILCS 5/19-1(a) (West 2014)). He was sentenced, based on his background, as a Class X offender to 25 years'

imprisonment. On appeal, he argues that the State failed to prove him guilty beyond a reasonable doubt. He also argues that his sentence is excessive. We affirm in part, vacate defendant's sentences, and remand for resentencing.

¶ 3 Defendant was charged by indictment with possession of a stolen motor vehicle and burglary to auto. The indictments alleged that defendant (1) possessed a 2004 BMW 525i, belonging to Tibor Farago, without being entitled to the possession of the vehicle, and knowing the vehicle to have been stolen or converted (625 ILCS 5/4-103(a)(1) (West 2014)); and (2) knowingly and without authority entered Farago's car with the intent to commit a theft therein (720 ILCS 5/19-1(a) (West 2014)). Prior to trial, the State offered defendant a reduced Class 4 charge and a three-year sentence in exchange for a guilty plea because Farago was diagnosed with cancer and his availability for trial was in question. Defendant declined the offer and the case proceeded to a jury trial.

¶ 4 The evidence adduced at trial showed that, on August 25, 2015, Tibor Farago owned a 2004 BMW 525i, which was for sale. That day, defendant called and inquired about purchasing the car. The car was located at an auto shop on Northwest Highway in Barrington. Farago met defendant at that location. There, Farago gave defendant the keys and defendant entered the car, sitting in the driver's seat. Defendant was on the phone and did not start the car. Defendant told Farago that he did not want to purchase the car because the mileage was too high. Defendant returned the keys to Farago and left. Farago left the car in the auto shop parking lot. The next day, Farago discovered the car was missing and reported it to police as stolen.

¶ 5 On August 29, 2015, Philip Cappitelli, the LoJack law enforcement liaison for Illinois, tracked the signal for Farago's vehicle to an apartment complex on Northwest Highway.

Cappitelli found the vehicle in the parking lot of the complex. He then parked his car behind Farago's vehicle so that it could not leave. Cappitelli called the police. As he waited, he saw an individual enter Farago's vehicle, retrieve items from the back seat, and then enter one of the apartment buildings. Cappitelli described the individual as a black male, 5 feet 10 inches tall, and "in his teens" or "early 20s." Palatine police officer Raul Contreras arrived and Cappitelli provided him with a statement. Cappitelli could not recall if he told Contreras that the person he saw was 15 or 16 years old.

¶ 6 Upon arriving on the scene, Contreras confirmed that the vehicle was stolen and had the car towed. Contreras observed that the car had an Illinois dealership license plate with the number DL455E. According to Farago, the car did not have license plates when he last saw it. Contreras spoke with Cappitelli, who provided him with a description of the person he saw retrieve items from the vehicle. Cappitelli's description was of a black male, 15 to 16 years old, with short hair. Contreras also included the name Kirshawn D. Matlock in his supplemental report. After the car was towed, the investigation was transferred to the Barrington Police Department.

¶ 7 Barrington police sergeant Kevin Croke contacted Farago to inform him that his car had been recovered. On August 30, 2015, Farago arrived at the police station to retrieve his vehicle. Farago attempted to open the car with his key, but it did not work. Croke believed that Farago's key must have been switched. Farago provided Croke with defendant's phone number. Farago described defendant as a skinny black male who was 5 foot 8 inches tall.

¶ 8 Farago went to the BMW dealership with his title and obtained a new key. The next day, he returned to the police station and was able to gain entry into the car with the new key. Once

inside, Farago noted several items that did not belong to him, including a stereo receiver and speakers, a modem, and a videocassette recorder (VCR). Croke took possession of the items identified by Farago and then released the BMW into Farago's custody.

¶ 9 Croke learned that, on August 28, 2015, an individual who identified himself as "Kirshawn Matlock" had called the station and reported that he had left items in the BMW. Croke discovered that the number matched the number defendant had used to call Farago. On September 2, 2015, Croke called the number and asked for Kirshawn. The person on the other end stated that Kirshawn was not available and identified himself as Kirshawn's brother, "Brontay." Croke explained that Kirshawn had called requesting items from inside a BMW that was towed. Brontay replied that he could pick up the items and was willing to take a train to the police station. Croke offered to meet Brontay at his home and drive him to the station. Brontay agreed and provided Croke with his address, which was the same apartment complex where the BMW had been recovered.

¶ 10 Croke drove to the apartment complex and saw defendant standing outside one of the buildings. Croke drove to defendant, who identified himself as "Brontay." Defendant entered the vehicle and Croke drove to the station. On the way, Croke asked defendant how his personal property came to be in a stolen car. Defendant explained that he had just moved from Springfield to Palatine, but still had personal items in Springfield. He was looking to borrow a car so that he could drive to Springfield and retrieve the items he left behind. He asked his brother, who suggested that he call "Josh Jarcrow." Defendant called Jarcrow and agreed to pay $100 to borrow Jarcrow's car. Defendant and his brother met Jarcrow, who he described as a black male, and his girlfriend at a house in Barrington, where they picked up the car. Defendant and his

brother drove the car from Barrington to Springfield and then back to Palatine. Before defendant had the opportunity to return the car to Jarcrow, the car had been towed.

¶ 11 Defendant provided Croke with the phone number for Jarcrow. Croke dialed the number and discovered it was a nonworking number. Croke asked defendant for Jarcrow's address, but defendant stated that he did not know it. Defendant offered to verbally direct Croke to the address. Defendant directed Croke to an address in Barrington that he confirmed was where he had met with Jarcrow. Croke then drove defendant to the police station. At the station, defendant identified the stereo speakers and the modem, but he did not recognize the VCR. Croke ultimately obtained the phone number for the residence that defendant had identified as belonging to Jarcrow. He called the number and the woman who responded sounded "older" and had an accent. The woman was unable to substantiate defendant's claim that either a young girl or black male resided at that address. Croke searched and could not find anyone named Josh Jarcrow living in Barrington.

¶ 12 Croke returned to defendant and read him his *Miranda* rights. Defendant acknowledged that he understood his rights and agreed to speak with Croke. After being confronted with the results of Croke's investigation, defendant told Croke that he was lying about Jarcrow. Defendant then named Cortez Herion as the person who had "stolen the car." Croke showed defendant a photograph of a person named Cortez Herion and defendant positively identified him. Croke confirmed that defendant was in possession of the cell phone with the number that had called Farago inquiring about the car and the police station regarding the items in the BMW.

¶ 13 Farago returned to the police station. There, he viewed two photo arrays administered by Sergeant Hanson based on photographs selected by Croke. Farago first viewed a photo array

featuring Herion and five other individuals. Farago stated that he did not recognize anyone. Farago was then shown an array that included defendant's photograph in the fifth position. Farago stated that it "could have been number five" but he was not "100% positive."

¶ 14 The parties stipulated that, if called, Hanson would testify that he administered both photo arrays to Farago. For both arrays, he instructed Farago to indicate if he was familiar with anyone depicted in the array. He also instructed Farago to place his initials next to the photograph of anyone he could identify. After viewing both arrays, Farago was unable to make an identification.

¶ 15 Croke informed defendant of the results of the photo array. Defendant asked Croke if it was "too late to tell the truth." Croke replied that it was not. Defendant gave Croke a verbal statement. Croke provided defendant with a voluntary statement form and asked him to write the statement. After defendant finished writing the statement, both he and Croke signed it. The statement was published to the jury.

¶ 16 In the statement, defendant related that, on August 26, he needed a car to transport his personal belongings from Springfield to Palatine. A friend informed him that he could find a car for sale, pose as a potential buyer, and then switch the keys. The friend also told him to put dealer plates onto the car and so defendant stole front and rear plates from a car dealership on Clear Lake in Springfield. On Friday, August 28, defendant took the Amtrak train to Chicago and the Metra to Palatine. In Chicago, a friend had given him an old BMW key. The next day, defendant borrowed a car to search for BMW's for sale. He found one in Barrington and contacted the owner. Defendant met with the owner, at which time he switched the keys.

Defendant came back later and drove the BMW home. He drove his mom to the hospital and then drove to Springfield and back. The next morning the car was towed.

¶ 17 After defendant provided the statement, Croke asked him if he was still in possession of the original BMW key. Defendant replied that he was and explained that he had hidden the key in a red winter vest in his apartment. Croke drove defendant to his apartment and had him call his brother, who was in the apartment, and instruct him to bring the vest outside. A man emerged with the vest and Croke took custody of it. Defendant told Croke to check the upper right pocket of the vest. Inside, Croke found a BMW car key. Croke later confirmed that the key from defendant's vest fit Farago's BMW.

¶ 18 The State introduced into evidence a certified registration indicating that license plate number DL455 is registered to a Crest Motor Sales Incorporated located at 2208 Clear Lake in Springfield.

¶ 19 Defendant testified on his own behalf. He acknowledged having previously been convicted of the following: burglary, retail theft, residential burglary, and possession of a stolen motor vehicle. Defendant's first conviction was when he was 17 years old. In August of 2015, defendant was 23 years old.

¶ 20 On August 29, defendant saw the BMW, which contained some of his personal belongings, being towed out of the parking lot. He testified inconsistently about whether he called the Barrington police station regarding the items in the BMW, initially stating that he did but later denying it was him. On September 2, Croke called him regarding the items. Defendant largely confirmed Croke's version of events regarding their interactions on that day. At some point, defendant learned from Croke that Jarcrow did not exist and he realized that his younger

brother Kirshawn might have stolen the car. Kirshawn, at the time a high school senior, was visiting from Springfield and staying with defendant and his mother in Palatine. When Croke informed him that Farago picked his photograph from an array, he decided to admit to the crime to protect his younger brother. He agreed to provide a written statement and "made up" the details based on information that Croke had previously disclosed.

¶ 21 The jury found defendant guilty on both counts. Defendant filed a motion for a new trial, which the court denied. The case then proceeded to sentencing.

¶ 22 At the sentencing hearing, the court heard arguments in aggravation and mitigation. In aggravation, the State informed the court that defendant was subject to mandatory Class X sentencing based on his 2014 possession of a stolen motor vehicle and 2011 residential burglary convictions. In asking for a sentence above the statutory minimum, the State noted that defendant had been sentenced to a term of eight years for his 2011 burglary conviction.

¶ 23 In mitigation, defense counsel noted that defendant's convictions were nonviolent and solely property crimes. Counsel highlighted defendant's youth. He also highlighted that defendant obtained his GED while incarcerated and, upon release, achieved 14 college credits before ultimately quitting. Counsel informed the court that defendant's mother was in poor health, which contributed to his decision to quit college, and that defendant hoped to donate his kidney to her.

¶ 24 In announcing its sentencing decision, the court agreed that defendant's criminal history was limited to nonviolent crimes against property. The court stated, however, that defendant's recidivism was "distressing." After reviewing defendant's criminal history and the various prison sentences that he received, the court noted that defendant committed the crimes at issue two

months after he was last released from prison. The court stated it was "taken aback" that defendant's various prison sentences did not have "any impact or effect upon him at all in terms of abiding by the law." The court noted that "[t]he public deserves a break," and sentenced defendant to two concurrent terms of 25 years' imprisonment. Defendant moved to reconsider sentence, which the court denied.

¶ 25 On appeal, defendant first argues that the State failed to prove him guilty beyond a reasonable doubt.

¶ 26 When a defendant challenges his conviction based upon the sufficiency of the evidence presented against him, we must ask whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). All reasonable inferences from the record must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. It is the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh evidence, and to draw reasonable inferences from the facts. *Brown*, 2013 IL 114196, ¶ 48. We will not substitute our judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses. *Brown*, 2013 IL 114196, ¶ 48. A defendant's conviction will not be overturned unless the evidence is so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *Id.*

¶ 27 In this case, defendant was convicted of possession of a stolen motor vehicle and burglary to auto. The State was thus required to prove that defendant: (1) possessed a 2004 BMW 525i, belonging to Tibor Farago, without being entitled to the possession of the vehicle,

and knowing the vehicle to have been stolen or converted (625 ILCS 5/4-103(a)(1) (West 2014)); and (2) knowingly and without authority entered Farago's car with the intent to commit a theft therein (720 ILCS 5/19-1(a) (West 2014)).

¶ 28 After viewing the evidence in the light most favorable to the State, we conclude that a rational trier of fact could find that defendant possessed Farago's BMW knowing it to have been stolen and entered Farago's BMW without authority intending to commit a theft therein. The record shows that, after viewing a photo array, Farago indicated that defendant "could have" been the person he met with the day before his car was stolen but was not "100%" certain. Defendant also lived in the apartment complex where the car was recovered, identified items inside the car as belonging to him, possessed the cell phone used to call both Farago and the police station, and knew where the key to the BMW was located. Finally, defendant provided Croke with a confession statement, corroborating key details of the crimes, such as switching keys with Farago and stealing dealership license plates from a car dealership on Clear Lake in Springfield. Given this record, we conclude that the evidence is not so unreasonable, improbable, or unsatisfactory that there remains a reasonable doubt of the defendant's guilt.

¶ 29 Defendant nevertheless argues that the State failed to prove him guilty beyond a reasonable doubt because there was no positive identification and the evidence was consistent with his testimony that he confessed to protect his younger brother, the actual offender.

¶ 30 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. This we cannot do. See *People v. Collins*, 214 Ill. 2d 206, 217 (2005) ("In reviewing the evidence, it is not the function of th[is] court to retry the defendant, nor will we substitute our judgment for that of the trier of fact."). At trial, the

jury heard the State's evidence as well as defendant's testimony that he confessed only to protect his little brother. It was for the trier-of-fact to weigh the credibility of defendant's testimony and determine which version of events to accept. See *People v. Villarreal*, 192 Ill. 2d 209, 231 (2001) (explaining that the trier-of-fact, when presented with conflicting versions of events, is "entitled to choose among those versions."); *People v. Fields*, 2017 IL App (1st) 110311-B, ¶ 30 (determinations of the credibility of witnesses are the responsibility of the trier of fact). Given the verdict, the jury resolved these inconsistencies in favor of the State. In doing so, the jury was not required to disregard the inferences that flow from the evidence or search 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 reiterate again that we will not substitute our judgment for that of the trier of fact on these matters. *Sutherland*, 223 Ill. 2d at 242.

¶ 31 Defendant also argues that his 25-year sentence is excessive given the nature of the offenses, his nonviolent criminal background, and the negotiated pretrial offer of a 3-year sentence.

¶ 32 The Illinois Constitution requires that a trial court impose a sentence that reflects both the seriousness of the offense and the objective of restoring the defendant to useful citizenship. Ill. Const. 1970, art. I, § 11; *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 27. "Although the legislature has prescribed the permissible ranges of sentences, great discretion still resides in the trial judge in each case to fashion an appropriate sentence within the statutory limits." *People v. Fern*, 189 Ill. 2d 48, 53 (1999) (citing *People v. Wilson*, 143 Ill. 2d 236, 250 (1991)). In reaching this balance, a trial court must consider a number of aggravating and mitigating factors,

including the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). As the trial court is in the best position to weigh these factors, it has broad discretionary powers in imposing a sentence, and its sentencing decisions are entitled to great deference. *Id.* at 212.

¶ 33 Generally, a reviewing court should not disturb a sentence that falls within the statutory range absent an abuse of discretion. *Alexander*, 239 Ill. 2d at 212-13. A trial court abuses its discretion by imposing a sentence that is at great variance with the spirit and purpose of the law, or is manifestly disproportionate to the nature of the offense. *Alexander*, 239 Ill. 2d at 212. The spirit and purpose of the law are upheld when a sentence reflects the seriousness of the offense and gives adequate consideration to the rehabilitative potential of the defendant. *People v. Murphy*, 72 Ill. 2d 421, 439 (1978).

¶ 34 Defendant's 25-year sentence imposed by the trial court falls within the permissible statutory range of 6 to 30 years. See 730 ILCS 5/5-4.5-25(a) (West 2014) ("The sentence of imprisonment shall be a determinate sentence of not less than 6 years and not more than 30 years."). Put simply, the trial court followed the law: it imposed a sentence within range and considered the appropriate sentencing facts. That said, we nevertheless conclude that the sentence amounts to an abuse of discretion.

¶ 35 In reviewing the record before us, we are mindful that "we must adhere to our constitution's mandate that penalties be determined according to the seriousness of the offense." *People v. Stacy*, 193 Ill. 2d 203, 211 (2000) (citing Ill. Const. 1970, art. I, § 11). Here, defendant stole a car after posing as a potential buyer in order to switch keys with the owner and then later returning to abscond with the car. The car was recovered and returned to its owner four days

after it was stolen. Defendant did not harm or threaten anyone. Given the record before us, we find defendant's sentence of two concurrent 25-year terms to be manifestly disproportionate to the nature of his offenses.

¶ 36 In reaching our decision, we share many of the concerns the trial court raised when it sentenced defendant. The trial court stated during oral pronouncements that defendant's recidivism was "distressing." We agree. We also highlight, as the court did, that defendant's criminal history consists entirely of nonviolent crimes against property. We also acknowledge the trial court's observation that defendant's prior prison sentences did not have "any impact or effect upon him at all in terms of abiding by the law." However, our mandate is to ensure that no sentence is "manifestly disproportionate to the nature of the offense." *People v. Fern*, 189 Ill. 2d 48, 54 (1999). Based upon our review of the facts, we find that defendant's conduct did not warrant a 25-year sentence. We therefore remand the case to the trial court for resentencing.

¶ 37 Affirmed in part; sentence vacated; cause remanded.