2018 IL App (1st) 162336-U

FIRST DIVISION
March 30, 2018

No. 1-16-2336

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 6966
	)	
TIMOTHY McSHANE,	)	Honorable
	)	Lawrence E. Flood,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Pierce and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for leaving the scene of an accident involving a death is affirmed. The evidence was sufficient to show defendant's knowledge that the accident involved another person. The trial court did not abuse its discretion in sentencing defendant to a total of 16 years' imprisonment.

¶ 2 Following a bench trial, defendant Timothy McShane was found guilty of two counts of aggravated driving under the influence (DUI), one count of reckless homicide, and two counts of leaving the scene of a motor vehicle accident involving a death. The trial court merged the charges into two counts and sentenced Mr. McShane to consecutive sentences of 4 years for

leaving the scene of an accident involving a death and 12 years' for aggravated DUI in which a death occurred. On appeal, Mr. McShane argues that the State provided insufficient evidence that Mr. McShane knew the accident involved another person. Mr. McShane also contends that the court abused its discretion in imposing a sentence of 16 years' imprisonment. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Daniel Runyon, Matthew Hoeft, and Anthony Caponigri testified that they were at the Aberdeen Tap with the victim, Shane Stokowski, on March 22, 2014. Mr. Runyon and Mr. Stokowski rode their bicycles to the bar, arrived at approximately 2 p.m., and sat at a table with Mr. Hoeft. They were joined by Austin Debane, Federico Cavazos, and Shawn McGillis. Shortly after 4 p.m., defendant Timothy McShane approached them and introduced himself. Mr. Hoeft and Mr. Runyon both testified that Mr. McShane appeared to be intoxicated. Mr. Runyon noted that Mr. McShane's eyes were glassy, his speech slurred, and he was not making "a whole lot of sense." Mr. McShane then went outside and got into a black sport utility vehicle (SUV) parked across from the bar on Aberdeen Street. Mr. McShane struggled to get out of his parking spot. Mr. Runyon testified that Mr. McShane "kind of backed into the car behind him and pulled into the car in front of him kind of struggling to get out of that spot." Eventually, his friend, Shawn Daley, was asked by bar patrons to go out and prevent Mr. McShane from driving. Mr. Daley left and talked to Mr. McShane. Mr. McShane and Mr. Daley eventually returned to sitting at the bar.

¶ 5 Approximately 10 minutes after Mr. McShane returned inside the Aberdeen Tap, he left through a side entrance and got into the vehicle once again. Mr. McShane again struggled to get out of his parking spot. Mr. Stokowski's friends testified that Mr. Stokowski announced that he was going outside to stop Mr. McShane from driving. Mr. Stokowski went outside the bar,

approached Mr. McShane's vehicle, and was talking to Mr. McShane, whose window was rolled down. Mr. Hoeft testified that Mr. Stokowski's hands were on the "top of the door, top of the window." Mr. McShane's car began moving and Mr. Stokowski walked alongside it as it travelled north on Aberdeen Street. Mr. Stokowski went from walking to running as the car accelerated. Mr. Stokowski's friends, who were watching from the bar, lost sight of Mr. Stokowski and the car as it travelled out of view.

¶ 6 Mr. Hoeft and Mr. Caponigri, who were sitting facing the window, got up and ran outside and found Mr. Stokowski lying unresponsive in the middle of Aberdeen Street. Mr. Hoeft testified that he "tried to turn [Mr. Stokowski] over, and there was blood coming out of his face, his neck." Mr. Runyon testified that Mr. Stokowski "had hit his head. Blood was coming out of his mouth and nose." Mr. McShane and his vehicle were gone. An ambulance took Mr. Stokowski to a hospital, where Mr. Runyon, Mr. Hoeft, and Mr. Caponigri later learned Mr. Stokowski was dead.

¶ 7 The State played clips of surveillance videos, which are not a part of the record on appeal, from the Aberdeen Tap during the testimony of Mr. Runyon and Mr. Hoeft and it entered the videos into evidence. Two bartenders at the Aberdeen Tap also testified that Mr. McShane appeared quite intoxicated and that at one point, they stopped serving him alcohol. Two other patrons of the bar also testified to the same events.

¶ 8 Nancy Horodecki testified that, in March 2014, Mr. McShane was her boyfriend and lived with her at her house. On the morning of March 22, 2014, Ms. Horodecki was not aware that Mr. McShane's driver's license had been suspended and she let him borrow her SUV, a black 2009 Nissan Murano. Later that day, at approximately 4:30 or 5 p.m., Mr. McShane returned home. Ms. Horodecki was packing boxes for an upcoming move, but she spoke to Mr.

McShane for approximately five minutes while she packed. Mr. McShane did not seem intoxicated. He told Ms. Horodecki "that his back hurt and he was tired and that he was gonna go lay down."

¶ 9 Ms. Horodecki heard Mr. McShane answer his phone around 8 or 8:30 p.m. Mr. McShane told Ms. Horodecki that Mr. Daley had called to inform him that a detective wanted to speak with Mr. McShane about an "incident" involving Mr. Stokowski, who had "followed him out of the bar and came to the car and held onto his neck, tried to grab his keys, tried to grab the steering wheel, tried to grab onto the car."

¶ 10 Mr. McShane called the detectives. Afterward, he started drinking and "said that he was drinking because he was nervous and he was gonna go talk to the detective." At approximately 9:45 p.m., Mr. McShane was picked up by the police. Police officers later came to Ms. Horodecki's house to view her SUV. Ms. Horodecki showed them to the garage. The car, which had not been driven since borrowed by Mr. McShane, did not appear to have been in an accident.

¶ 11 Karrie Keleher testified that, at approximately 4:45 p.m. on March 22, 2014, she had parked her car on Aberdeen Street and was walking home with her two children. She walked north across Hubbard Street and was on the corner of Hubbard and Aberdeen Streets when she saw Mr. Stokowski. He walked out of the Aberdeen Tap and approached a black Nissan Murano, which was approximately 30 to 40 feet away from Ms. Keleher. Mr. Stokowski was saying, " '[D]on't do it, man. Don't do it.' " Mr. Stokowski stopped by the car's driver's-side window, which was open. He put his hands on the car's door panel and continued to tell the driver not to drive.

¶ 12 Ms. Keleher did not hear the driver say anything. The car began slowly moving north on Aberdeen Street, out of its parking space. Mr. Stokowski, hands still on the door panel, jogged

with the car, saying, "Don't do it, man. Don't do it." Then the car "just took off. He just hit the gas so fast." Ms. Keleher turned her head away because she was with her children, but "knew something bad happened" because there was "a really bad sound." She knew that it was Mr. Stokowski hitting the ground, immediately called 9-1-1, and took her children home.

¶ 13 The parties stipulated that an employee from Chicago's 9-1-1 department would testify that the department received a call at 4:53 p.m. on March 22, 2014, from a person identifying themselves as Ms. Keleher. The State played a recording of the call for the court.

¶ 14 Chicago police investigator David Nigro testified that, at approximately 6:30 p.m. on March 22, 2014, he arrived at the scene of a fatal car accident in the area of Hubbard and Aberdeen Streets. At approximately 9:30 p.m., Officer Nigro received information that Mr. McShane had called the police. Nobody had reported involvement in the accident prior to that time. Mr. McShane was placed into custody and taken to the police station. Mr. McShane appeared to be intoxicated and talked "nonstop." Based on Mr. McShane's comments, Officer Nigro assigned officers to investigate a black SUV in the garage of Mr. McShane's home. The vehicle was covered in grime and there were marks on the driver-side door, which Officer Nigro agreed were "consistent with fingers being pulled down that area."

¶ 15 Cook County Medical Examiner Dr. James Filkins testified that, on March 23, 2014, he performed a post-mortem examination on Mr. Stokowski. Dr. Filkins concluded that Mr. Stokowski "died of cranial cerebral injuries [due to] having been struck by a sport utility vehicle." Dr. Filkins noted in the State's presentation of autopsy photos, which were admitted at trial but were not included in the record on appeal, injuries on the right side of Mr. Stokowski's head that were "consistent with an automobile tire tread or the edge of an automobile tire." The injuries were consistent with Mr. Stokowski's "left side lying on the pavement and the right side

of his face is exposed to the tire." Dr. Filkins testified that "[j]ust about every bone in the skull was broken to one degree or another." Mr. Stokowski's injuries would most likely have caused him to die instantly.

¶ 16 The parties stipulated that a certified driver's abstract from the Secretary of State's Office would show that Mr. McShane's driver's license was suspended on March 22, 2014.

¶ 17 The trial court found Mr. McShane guilty of all charges. Mr. McShane filed a motion to reconsider the guilty finding, which the court denied.

¶ 18 Mr. McShane's presentence investigation report (PSI) reflected that he was 42 years old at the time of the offense. He reported that he had a good relationship with his family, had been married once, was divorced, and had a 10-year-old son from that marriage. Mr. McShane reported that he graduated from high school, attended college, and was three credits short of obtaining his bachelor's degree. He reported that he had been employed as a facilities technician at Mercy Home for Boys and Girls in Chicago starting in September 2014.

¶ 19 Mr. McShane's criminal history reflects four misdemeanor offenses: a 1993 destruction of property for which he received 3 months' court supervision, a 1993 DUI for which he received 1 year's supervision, a 2006 reckless driving for which he received 18 months' conditional discharge, and a 2007 battery for which he received 1 year's supervision. Mr. McShane reported that he had not consumed alcohol since March 22, 2014, that he regularly attended Alcoholics Anonymous (AA) meetings, and that he moved into a sober living facility in June 2014.

¶ 20 The State presented evidence in aggravation. It called the arresting officer from a 2004 incident in which Mr. McShane was charged with DUI. The parties stipulated that the case was ultimately non-suited and Mr. McShane pleaded guilty to a moving violation. The parties also

stipulated that an officer with the Palatine Police Department would testify that he arrested Mr. McShane for a 2006 DUI. That DUI charge was amended and Mr. McShane was convicted of reckless driving. Mr. Stokowski's brother, sister, and mother read impact statements to the court.

¶ 21 In mitigation, Mr. McShane called Lane Marchiori, who testified to Mr. McShane's sobriety and his residence at a sober living facility. Mr. McShane's mother also testified on Mr. McShane's behalf, discussing the impact Mr. McShane's incarceration would have on Mr. McShane's son and Mr. McShane's family's history of alcoholism. Mr. McShane exercised his right to allocution and apologized for his actions and their impact on Mr. Stokowski's family and Mr. McShane's own family.

¶ 22 The State argued in aggravation that, "based upon the facts of this case, as well as his behavior throughout his life, that [Mr. McShane] should be sentenced to the maximum allowed by law." It argued that "[t]his is really a case about unheeded warnings" and that Mr. McShane believed "the rules don't apply." The State cited Mr. McShane's 1993, 2004, and 2006 DUI charges and argued that he had been given his warnings and he ignored them. It also noted that Mr. McShane lost his job driving a commercial vehicle when he failed a breathalyzer test in 2012 and, the very day of the accident, Mr. McShane chose to drive without a valid driver's license. Counsel argued that Mr. Stokowski himself gave Mr. McShane his final unheeded warning not to drive under the influence just before his death. Finally, the State noted that Mr. McShane failed to change his behavior, even after the accident, when he left the scene of the accident and began drinking again before talking to the police.

¶ 23 In mitigation, defense counsel argued that the trial court must consider Mr. McShane's rehabilitative potential. Counsel stated that, "[t]he person that's sitting here in this courtroom today, Judge, is not the same person that was sitting at the Aberdeen Tap that night." He argued

that "alcoholism had ravaged [Mr. McShane's] family" and that "there is a genetic predisposition to this disease that [Mr. McShane] has." Counsel also argued that Mr. McShane had admitted his alcoholism and had begun recovery, which included his residence at a sober living facility and participation in AA. Finally, he emphasized the impact that incarceration would have on Mr. McShane's 10-year-old son.

¶ 24 The trial court noted that it had considered the PSI, witnesses presented by both sides, and Mr. McShane's statement in allocution. The court stated that "looking at the evidence that [the court] heard in this case *** I believe your actions on that day were outrageous and extreme, for five reasons," stating:

> "No. 1, you were on notice regarding your issues with alcohol, prior to that day. You knew about those issues. You never did anything about them.
>
> Secondly, you should not have been driving that day. Your license was suspended. There's no way you should have been behind a vehicle on that particular day.
>
> Thirdly, when you went into the bar, and drank, and left the first time, people told you, you should not drive; and in fact, you recognized that, and came back into the bar.
>
> As both [c]ounsels have argued in aggravation and mitigation, you could have taken a cab. You could have walked away. You could have ended it at that particular point in time; but you consciously made a decision to leave that bar, and to get in that vehicle, and drive away.
>
> Finally, you did so with the victim next to the vehicle, as you pulled away, and accelerated, resulting in his death, okay?

> I find that conduct outrageous and extreme."

The court merged counts and sentenced Mr. McShane to 12 years' imprisonment for aggravated DUI and 4 years' imprisonment for leaving the scene of an accident involving a death.

¶ 25 Mr. McShane filed a motion to reconsider sentence. In it, he argued that "the [c]ourt's use of the language of extreme, outrageous conduct indicates that the [c]ourt believes it was more than an accident. That's how we'd ask the [c]ourt to reconsider the sentence imposed." At a hearing on the matter, the court responded:

> "The comment, extreme and outrageous, went to what occurred, the videotape of [Mr. McShane's] actions inside the bar, prior to his ever getting in the vehicle, considering his background with alcoholism. That's what the comment was related to. It wasn't related to the accident its [*sic*]. It is an accident. I understand that."

¶ 26 The trial court denied Mr. McShane's motion to reconsider.

¶ 27 II. JURISDICTION

¶ 28 Mr McShane's motion to reconsider was denied on August 3, 2016, and he timely filed a notice of appeal the following day. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 and 606, governing appeals from final judgments of conviction in criminal cases (Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013)).

¶ 29 III. ANALYSIS

¶ 30 On appeal, Mr. McShane argues that the State provided insufficient evidence to prove him guilty beyond a reasonable doubt of leaving the scene of an accident involving a death because there was insufficient evidence that he knew someone else was involved in the accident

and that the court abused its discretion in imposing a combined sentence of 16 years' imprisonment. We address each issue in turn.

¶ 31 Mr. McShane first argues that the evidence at trial was insufficient to prove him guilty of leaving the scene of an accident involving a death. Specifically, he argues that there was insufficient evidence that he knew that he had been in an accident involving another person—an essential element of the offense. The State argues that the trial court properly inferred Mr. McShane's knowledge from circumstantial evidence.

¶ 32 On a challenge to the sufficiency of the evidence, we inquire " '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.' " (Emphasis omitted.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In so doing, we draw all reasonable inferences in favor of the State (*Davison*, 233 Ill. 2d at 43) and we do not retry the defendant (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The State must prove each element of an offense beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). It is within the province of the trier of fact "to determine the credibility of witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence." *Id.* at 228. We will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 33 Mr. McShane was convicted under section 11-401(b) of the Illinois Vehicle Code (625 ILCS 5/11-401(b) (West 2014)), which provides that it is a Class 1 felony for a driver of a motor vehicle to "(1) flee the scene of a motor vehicle accident resulting in death and (2) fail to report the accident at a police station or sheriff's office within half an hour of the accident." *People v.*

Eubanks, 2017 IL App (1st) 142837, ¶ 45; see 625 ILCS 5/11-401(b) (West 2014). A conviction under 11-401(b) requires the State to prove that the offending motorist had "knowledge that he or she was involved in an accident that involved another person." *People v. Digirolamo*, 179 Ill. 2d 24, 42 (1997). Circumstantial evidence may be used to prove the knowledge requirement. *Id.* Additionally, "knowledge that another person was involved in the accident may be imputed to a driver from the circumstances of the accident." *Id.*

¶ 34 The circumstances under which Mr. McShane hit Mr. Stokowski are undisputed. Multiple witnesses testified the driver-side window of the vehicle was open and that Mr. Stokowski rested his hands on the window ledge. Mr. Stokowski was speaking to Mr. McShane when Mr. McShane began moving the vehicle out of the parking spot and northbound onto Aberdeen Street. Mr. Stokowski walked beside the vehicle and, as the vehicle accelerated in speed, he ran. Mr. Stokowski maintained his hand position on the window ledge throughout. Ms. Keleher, who was 20 to 40 feet away, testified that there was "really bad sound," she knew Mr. Stokowski had fallen, and she immediately called 9-1-1. Officer Nigro testified there were marks on the driver's-side door that were consistent with someone's fingers going down the door as they fell. The autopsy indicated that a vehicle's tire rolled over Mr. Stokowski's head and crushed his skull. Mr. McShane's statement to Ms. Horodecki that someone followed him out of the bar and tried to grab his neck, the steering wheel, and the keys supports a finding that Mr. McShane knew someone was near his car. Considering all of the above, we find that a rational trier of fact could have concluded that Mr. McShane knew Mr. Stokowski was present. The court reasoned:

> "Just prior to the accident, the victim had his hands on the window frame and was right next to [Mr. McShane] as the [Mr. McShane] pulled away from the parking space first slowly then rapidly. As the victim fell from the vehicle, a

reasonable inference to be drawn from the evidence is that one of the tires of the vehicle ran over the skull of the victim. That's based upon the opinion of Dr. Filkins, and the testimony of Ms. Keleher who heard what she described as a terrible sound and turned her head away. She was 20 or 40 feet away at this point.

[Mr. McShane] was right next to the victim when he fell. His window was opened. He had to have heard some sort of sound coupled with the fact based upon the injuries, he had to have felt some bump or some unusual movement of the vehicle."

¶ 35 Mr. McShane next asserts that the court did not consider several mitigating factors at sentencing, including the unintentional nature of his offense, his genetic predisposition to alcoholism, and evidence of his rehabilitative potential. The State responds the trial court entered a sentence within the statutory range after considering the relevant sentencing factors in aggravation and mitigation.

¶ 36 It is well-settled that a trial court has broad discretionary powers in imposing a sentence. *People v. Alexander*, 239 Ill. 2d 201, 212 (2010). A trial court's sentencing decisions will not be altered by a reviewing court absent an abuse of discretion. *People v. Snyder*, 2011 IL 111382, ¶ 36. The trial court's sentencing decision is entitled to great deference because it is generally in a better position to determine the sentencing factors than the reviewing court which must rely on the " 'cold' record." *People v. Fern*, 189 Ill. 2d 48, 53 (1999). The reviewing court may not substitute its judgment for that of the trial court merely because it would have weighed these factors differently. *Alexander*, 239 Ill. 2d at 213. "[I]t is not our duty to reweigh the factors involved in [the trial court's] sentencing decision." *Id.* at 214.

¶ 37 Moreover, in this case the trial court explained its sentence in some detail. Even without

such an explanation, the trial court is presumed to have considered all relevant factors and any aggravation and mitigation evidence presented, absent some contrary indication. *People v. Jackson*, 2014 IL App (1st) 123258, ¶ 48. While the sentencing court may not ignore evidence in mitigation, it may determine the weight to attribute to it. *People v. Markiewicz*, 246 Ill. App. 3d 31, 55 (1993). A defendant must affirmatively establish that the sentencing court did not consider the relevant factors. *People v. Burton*, 2015 IL App (1st) 131600, ¶ 38.

¶ 38 Mr. McShane was convicted for aggravated DUI resulting in a death, a Class 2 felony with a sentencing range of 3 to 14 years' imprisonment (625 ILCS 5/11-501(d)(2)(G) (West 2014)), and for leaving the scene of a motor vehicle accident involving a death, a Class 1 felony with a sentencing range of 4 to 15 years (730 ILCS 5/5-4.5-30(a) (West 2014)). Mr. McShane's consecutive sentences of 12 and 4 years' imprisonment, respectively, both fall within statutory sentencing ranges.

¶ 39 There is nothing in the record to suggest that the trial court ignored the mitigating factors presented. Prior to sentencing, the mitigating factors Mr. McShane highlights in his argument were presented to the court in his PSI, the testimony of his family members at sentencing, his statement in allocution, and defense counsel's arguments. Prior to announcing the sentence, the trial court expressly noted his PSI, mitigating witnesses, statement in allocution, and "the evidence that [the court] heard in this case." Although the trial court may not have specifically mentioned all of the mitigating factors upon which Mr. McShane now relies, the trial court is not required to specify on the record all of the reasons for its sentence (*People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 24), nor recite and assign a value to each fact presented at the sentencing hearing (*People v. Partin*, 156 Ill. App. 3d 365, 373 (1987)).

¶ 40 We do not find that the trial court abused its discretion in sentencing Mr. McShane.

¶ 41 IV. CONCLUSION

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

¶ 43 Affirmed.