

No. 1-16-0518

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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 2164
)	
CARL KLOPP,)	
)	Honorable
Defendant-Appellant.)	William Timothy O'Brien,
)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not violate defendant’s postarrest right to remain silent; and (2) defendant’s eight-year sentence for aggravated robbery was not excessive or constitutionally disproportionate.

¶ 2 Defendant Carl Klopp was found guilty of aggravated robbery and aggravated battery of a merchant following a bench trial. The trial court subsequently sentenced defendant to eight years for the aggravated robbery conviction and 3 years for the aggravated battery conviction, to be served concurrently. Defendant appeals, arguing that: (1) the trial court violated defendant’s

exercise of his right to remain silent, and (2) his sentence of eight years is constitutionally disproportionate to the harm caused.

¶ 3 In February 2015, defendant was charged by information with aggravated robbery (720 ILCS 5/18-1(b)(1) (West 2014)) and aggravated battery of a merchant (720 ILCS 5/12-3.05(d)(9) (West 2014)) for the January 23, 2015 robbery of Veronica Sanchez at her place of business. The following evidence was presented at defendant's bench trial.

¶ 4 We first observe that the supplemental record containing the report of proceedings from defendant's bench trial is missing three pages of testimony from the victim Veronica Sanchez. The missing testimony includes the conclusion of Sanchez's direct examination and the start of her cross-examination. Defendant, as the appellant, bears the burden of providing a sufficiently complete record to support its claims of error. *People v. Smith*, 406 Ill. App. 3d 879, 886 (2010); see also *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Any doubt arising from the incompleteness of the record will be construed against defendant. *Id.*

¶ 5 Veronica Sanchez testified with the assistance of a Spanish language interpreter. At approximately 12:30 p.m. on January 23, 2015, Sanchez was at her place of employment located at 2131 West Belmont Avenue in Chicago. The business was a dry cleaning store owned by Sanchez. She described the business as having a lobby in the front, a counter, and then the clothes are in the back. In the back of the business, there was a kitchen and washing machines. When the front door opens, there is a bell that rings to alert her of a customer. On that date, she was in the kitchen when she heard the bell at the door ring. She saw a man had entered her store and she asked him to give her a second and then she would take care of him. When she went to the front of the store, the man was sitting in a chair in the lobby. She identified defendant in court as the man sitting in her lobby.

¶ 6 Sanchez said hello to defendant and asked how she could help him. Defendant then stood up and came toward the counter. Sanchez was behind the counter. When defendant was on the other side of the counter, he told Sanchez to give him money because he had a gun. At that time, defendant pushed an object, purportedly a gun, at Sanchez's upper right chest near her shoulder. She felt a heavy object. The object was inside a blue bag. Sanchez held up her hands, in a surrender. She then lowered her right hand to open the register with a key. She then pulled out the bills from the register. As she did this, defendant continued to point the object at her. After she placed the money on the counter, defendant put the object and the bag on the counter. He then started to take accessories sold by Sanchez from the counter. Defendant started to put the items in a bag. At that point, Sanchez observed that defendant did not have a gun, she saw the plastic portion of a pair of pliers. She identified the pliers in court as the weapon used to threaten her.

¶ 7 While defendant was placing the accessories in a bag, Sanchez pushed the silent alarm for the police. Defendant then asked her why she called the police. He then struck Sanchez on her left arm with the weapon. Defendant then came to the other side of the counter where Sanchez was standing. Defendant started to punch her with his fist on Sanchez's right side. In response, Sanchez tried to grab his hand and pushed him. She went to the front door to the business, but the door was locked. She did not have time to unlock the door because defendant came towards her. Defendant told her to let go because he wanted t to leave. He said that when the police arrived, he would tell them he came into the store to sell her jewelry. The police then arrived and defendant was arrested.

¶ 8 Sanchez was taken to Thorek Hospital. She identified photographs of her injuries, which showed scratches around her neck area. Defendant scratched her when he wanted to leave. He

was pulling at her with his hands. Sanchez went to the hospital a second time the following day because her arms hurt and she was in pain. Sanchez identified photographs of her arms showing significant bruising on her upper arm. Additional photograph exhibits showed the money on the counter, the accessories defendant had begun to take, the blue bag with the exposed plastic coated handles of the pliers, and the storefront from Belmont Avenue.

¶ 9 On cross-examination, Sanchez agreed that she did not have a Spanish interpreter present during the incident with defendant. She denied locking the door to the store. Sanchez denied that defendant tried to sell her a bracelet. She admitted that in her prior testimony at a preliminary hearing, she was asked if defendant tried to sell her a bracelet and she answered yes. Sanchez also denied telling a detective on the day of the robbery that she locked the front door as she struggled with defendant. On redirect, Sanchez testified that the detective did not speak Spanish, and he only spoke English when they spoke. Sanchez stated that she understood the English word “gun” and the phrase “give me your money.” She said defendant mentioned a bracelet after they had fought inside the store. He told her that when the police came, he would tell them that he came into the store to sell her jewelry and for her to let him go. On recross, Sanchez admitted that at the time defendant was saying what he would tell police, he had a bracelet in his hand. The money was still on the counter at this time.

¶ 10 The State rested after Sanchez’s testimony. Defendant moved for a directed finding, which the trial court denied.

¶ 11 James Reynolds testified for the defense. Reynolds is an antiques dealer and owns a store located at 2108 West Belmont Avenue in Chicago. His store is “about a block down or so” from Sanchez’s dry cleaners. Reynolds has known defendant for over 20 years and identified him in court. He is not related to defendant. Defendant has worked odd jobs for him, such as, shoveling

snow and washing windows. Reynolds described defendant as a “picker,” who is “someone who finds an object that is brought to us for resale, things that we may be wanting to put into our inventory.” Defendant had brought Reynolds “everything from clothing to jewelry to paper goods, items of furniture, almost anything that we might carry.” Reynolds would see defendant once a week or once every other week because defendant lived in the neighborhood, a few blocks from the store.

¶ 12 Reynolds knew other individuals who were acquainted with defendant, including some people that work for Reynolds and other antique dealers on the street. He has been present when people have discussed defendant. He estimated that he had discussed defendant with four or five people over the years. Defendant’s reputation was that he was a “very calm, easygoing gentleman. Very respectful.” In his personal opinion, Reynolds found defendant to be “extremely peaceful in all the interactions” he had with defendant.

¶ 13 On cross-examination, Reynolds testified that he heard about the incident that was the subject of the trial and could not “imagine that he in any way was involved in this kind of incident as it was described” to him. Reynolds admitted that he never saw Sanchez’s bruises. He stated that he did not know who she is, but knew where her store was located. Since he became aware of the case, Reynolds had only spoken with his employees about defendant.

¶ 14 Defendant testified on his own behalf. At the time of trial, he was 54 years old and lived with his brother in a house on West Oakdale Avenue. He lived in that house his whole life. Defendant left high school during his sophomore year. He stated that he was in the “slow learners’ class” in school. While in high school, defendant said there were “a lot of gangs and everything. I just didn’t understand the classes and that, and then dropped out.” Defendant

supports himself by doing odd jobs and his sister helps him. Defendant stated that he sells jewelry. He buys the jewelry from a small store on 47th Street and then he resells it.

¶ 15 On January 23, 2015, at around noon, defendant went to Aldi's grocery store and went home. He then came back out and was going to try to sell a bracelet. He was on his bicycle. He stopped by the cleaners to sell the bracelet. When he first entered the store, the woman was in back brushing her hair. He told her he had a gold bracelet to sell and she told him to "hang on a second." Defendant denied going into the cleaners to rob her. Defendant described the events as follows:

"When I got there, she came to the cash register and she started taking change out of the register, put it on the counter. Then she took the bills, put it on the counter. And then she reached underneath the counter and she pulled up a bag with a pair of pliers in it, and then she ran to the door and she locked the door."

¶ 16 Defendant denied asking her for money and did not know why she started to take money from the cash register. Defendant denied hurting her, he stated that he "never touched her." She called 911 from a phone in her hand. He asked her who she was calling, and she said she was calling her daughter. He told her that she was not, she was calling the police. Defendant "just stood there" until the police came. A sergeant came in and put defendant in handcuffs. Defendant testified that he was "about ready to say something and he told me to shut the f*** up." The sergeant opened to door and pushed defendant out and into the police vehicle. Defendant stated that the jewelry was left on the counter, but he was able to get it back.

¶ 17 On cross-examination, defendant denied having a bag with him when he left his home after dropping off his groceries. He did not stop at any other stores to try to sell the bracelet. He went straight to the dry cleaners, even though there were antiques stores on the street where he

had previously sold items. Defendant knew Sanchez's store was a cleaners and did not sell antiques. He went there to ask her if she wanted to buy the bracelet. He maintained that she put the pliers on the counter, but denied that the pliers were in an Aldi bag. She first took money from the cash register, including rolls of coins. When defendant asked her if she wanted to buy the bracelet, she said no. Defendant stated that Sanchez already had a scratch on her neck. On redirect, defendant admitted that he had never sold anything to Sanchez in the past, nor had he sold to her daughter or anyone else in her family.

¶ 18 The parties then offered a stipulation. If called to testify, Detective Thomas Beck would testify that he is a Chicago police detective and was assigned to this case. He interviewed Sanchez at Thorek Hospital. He does not speak Spanish, and the interview was conducted solely in English. During the interview, Sanchez told him that "she was able to get to the front door and lock it as she continued to struggle with the offender until the police arrived." Defendant rested his case after the stipulation.

¶ 19 Following closing arguments, the trial court entered its findings on the record. The court found Sanchez to be "very believable" and it was "very clear as to what she understood [defendant] to have said to her and then the actions that he took." The court noted that her testimony was consistent with the photograph exhibits of her injuries, which showed "significant bruising to the right arm, scratching all about the neck and on her arm. There's an absolute struggle. This wasn't the solicitation of a picker or a person who was selling jewelry to a shopkeeper." The court further stated that defendant had never sold jewelry to her before in the cleaners, even though defendant had clients on the block. The court then found defendant guilty of aggravated robbery and aggravated battery. In December 2015, defendant filed a motion for a new trial, which included an allegation that the trial court "erred in holding that [defendant] had

the burden of making a statement to explain himself to police at the scene of the alleged offense.”

¶ 20 At the subsequent hearing, the trial court denied defendant’s motion for a new trial. The court then proceeded to sentencing. After hearing evidence in aggravation and mitigation, the trial court sentenced defendant to eight years for the aggravated robbery and three years for aggravated battery, to be served concurrently. Defendant filed a motion to reduce his sentence arguing that the trial court gave insufficient weight to the mitigating factors while giving “great weight” to Sanchez’s victim impact statement. The motion stated that an investigation by the defense suggested that Sanchez “may have exaggerated her difficulties following the incident.” This assertion was based on two visits by defense investigators to Sanchez’s dry cleaners and she was working “apparently without difficulty.” The trial court denied defendant’s motion.

¶ 21 This appeal followed.

¶ 22 On appeal, defendant first argues that the trial court violated defendant’s exercise of his right to remain silent in its findings. Specifically, defendant contends that the trial court construed defendant’s silence during his arrest against him in violation of *Doyle v. Ohio*, 426 U.S. 610 (1976). The State responds that defendant has misinterpreted the trial court’s findings which were proper based on Sanchez’s testimony which was corroborated by the photographs of the extensive bruising and scratches she sustained during her struggle with defendant during the robbery. The State also asserts that defendant misunderstands the holding of *Doyle*.

¶ 23 In *Doyle*, the United States Supreme Court “held that since a defendant’s silence after being informed of his right to remain silent is ‘insolubly ambiguous’, and in light of the implied assurance given in the *Miranda* warnings that silence will carry no penalty, ‘it would be fundamentally unfair and a deprivation of due process to allow the arrested person’s silence to be

used to impeach an explanation subsequently offered at trial.’ ” *People v. Bock*, 242 Ill. App. 3d 1056, 1072 (1993) (quoting *Doyle*, 426 U.S. at 617-18). The Illinois Supreme Court has held that it is error to comment on a defendant’s postarrest silence, even if he did not remain silent yet did not incriminate himself. See *People v. Herrett*, 137 Ill. 2d 195, 214 (1990). However, the *Herrett* court went on to say that “a comment upon a defendant’s post-arrest silence, while improper, is not an error of such magnitude as to clearly deprive the defendant of a fair trial.” *Id.* at 215. The Illinois Supreme Court has held that *Doyle* violations are subject to a harmless error analysis. *People v. Hart*, 214 Ill. 2d 490, 517 (2005).

¶ 24 In this case, defendant is not contending that the State improperly elicited testimony or commented on defendant’s postarrest silence. Rather, defendant asserts that the trial court in its finding of guilt held defendant’s silence against him as evidence of guilt. *Doyle* does not address this issue and defendant does not cite any case law finding a *Doyle* violation in factual findings by a trial court.

¶ 25 Nevertheless, the Illinois Supreme Court has held that “an accused is within his rights when he refuses to make a statement, and the fact that he exercised such right has no tendency to prove or disprove the charge against him, thus making evidence of his refusal neither material or relevant to the issue being tried.” *People v. Lewerenz*, 24 Ill. 2d 295, 299 (1962) (citing *People v. Rothe*, 358 Ill. 52, 57 (1934)). Illinois courts have recognized that since both *Lewerenz* and *Rothe* predate *Miranda*, “the prohibition which they set forth under Illinois evidence law does not depend on whether defendant’s postarrest silence occurred before or after he was advised of his *Miranda* rights.” *People v. Quinonez*, 2011 IL App (1st) 092333, ¶ 26 (citing *People v. Clark*, 335 Ill. App. 3d 758, 762-63 (2002)). “The language of relevancy and materiality utilized by our supreme court in *Lewerenz* and *Rothe* indicates that the Illinois rule which prohibits

impeachment with defendant's postarrest silence is based on evidentiary principles, rather than constitutional law." *Id.* Thus, while defendant's argument does not fall within *Doyle*, Illinois evidence law under *Lewerenz* is applicable, such that, defendant's silence at the time of his arrest is not "material or relevant" to the issue of his guilt.

¶ 26 During his trial testimony, defendant testified that when he was being arrested, he was ready to say something, but the arresting officer told defendant to "shut the f*** up." Defendant then remained silent. Defendant argues in his brief that "the trial court mistakenly recalled that [defendant] failed to offer an explanation to police for the altercation" and cites to the page in the report of proceedings where the trial court entered its findings. The trial court's complete factual findings were as follows.

"The Court has listened to the evidence; that being the testimony of the victim as well as the defendant and the officer, as well as considered photographs that have been admitted into evidence to find the victim in the case to be very believable, a shop owner who comes to the front of the store and is very clear as to what she understood [defendant] to have said to her and then the actions that he took. And those are consistent with the injuries she received as well as – or depicted in these exhibits, significant bruising to the right arm, scratches all about the neck and on her arm. There's an absolute struggle. This wasn't the solicitation of a picker or a person who was selling jewelry to a shopkeeper.

First of all, she's a cleaners. He never sold jewelry to her before. He goes in and he's decided he has a lot clients [*sic*] that are on that block who have bought stuff from him, according to the reputation witness. He doesn't go to them. He goes to this woman who's in the cleaning business who never bought stuff

from him and he never sold stuff to her. And he goes in armed with a channel lock in order to help the sale? I don't believe it. You know, he picked the wrong person to go after. I'm not saying what she did was bright, but he picked on the wrong person. She was a fighter. Thank God she wasn't killed, but I don't believe that this is some misunderstanding. A misunderstanding does not result in injuries of this nature. A misunderstanding would have been brought to the attention of the officers who arrive on the scene and see him inside the place. There was no expression of a misunderstanding.”

¶ 27 Defendant's attempt to construe the judge's remarks about a “misunderstanding” as a comment on defendant's postarrest silence is a mischaracterization of those findings. Instead, as the State points out, the use of the term “misunderstanding” was in direct response to defense counsel's closing argument and clearly based on the court's credibility findings. Counsel argued:

“Your Honor, these are not the actions of a robber. A robber doesn't come into a place and when the person gives them money, leave it on the counter. A robber, when they have the chance to leave, they leave. They will take the money and leave. When the police got there, all this money, all these things are still on the counter including this tool, the bag, all this kind of stuff.

I believe a more reasonable explanation of what happened was that he came in there, she does not understand English incredibly well. She misunderstood what he was saying. She thought there was a problem. She started throwing things down, called the police, and he got upset and nervous. She understands English when she wants to understand English. She understands English when the State gave her a few things to ask, but she didn't somehow

understand English when she was talking at the hospital to the detective. And they're [*sic*] instead of some mysterious person or [defendant] locking the door, she had gone around him and locked the door to keep him in so that she could call the police. [Defendant] as Mr. Reynolds testified, has a very good reputation among the businesses and works with all these people on the street. He's not going to rob somebody that's in his customer base. These are all businesses that he does things for. It's an open street. This store opens right onto Belmont street. It's a glass window. It makes absolutely no sense he would go in there and rob her. What makes more sense is that there was a misunderstanding and things got out of hand; and unfortunately, she did get scratched and there was a bruise on her arm. But it was not due to [defendant] and not due to any kind of robbery or aggravated battery."

¶ 28 When viewed in context with defense counsel's closing argument as well as the evidence presented at trial, we find no error in the trial court's findings. The trial court explicitly stated that it found Sanchez to be credible and the photograph exhibits corroborated her statement. The court further found defendant's testimony not credible where defendant testified he decided to go into the cleaners to sell jewelry in spite of the fact that he had never sold jewelry to Sanchez or anyone at that store before and where defendant had sold items in the past to other merchants on the same block. In response to defense counsel's argument that the incident arose out of a misunderstanding, the trial court addressed and rejected that argument and found no misunderstanding. After reviewing the trial and the court's findings, we conclude that the court did not violate Illinois evidentiary law under *Lewerenz* because defendant's silence was not considered material or relevant to the question of his guilt. Rather, the court's findings clearly

establish that the guilty verdict was based on the court's credibility determinations and the evidence presented. Accordingly, we affirm defendant's convictions for aggravated robbery and aggravated battery.

¶ 29 Next, defendant asserts that his eight-year sentence was excessive and constitutionally disproportionate in light of the small harm he caused and the presence of substantial mitigating factors. The State maintains that the trial court did not abuse its discretion in sentencing defendant to eight years in prison.

¶ 30 Initially, the State contends that defendant has forfeited this argument because he did not raise it before the trial court. In his motion to reduce sentence, defendant argued that the trial court gave insufficient weight to the mitigating evidence and placed a great weight on Sanchez's statement and testimony. The motion also asserted that an investigation by the defense suggested that Sanchez exaggerated her difficulties because investigators visited her at her business on two occasions and she was working without any apparent difficulty. The court denied the motion. The State asserts that this argument is different from the argument raised before this court. However, none of the cases cited by the State involved a claim challenging a trial court's sentence as excessive and disproportionate. See *People v. Carlson*, 79 Ill. 2d 564, 577 (1980); *People v. Center*, 198 Ill. App. 3d 1025, 1031 (1990); *People v. Cherry*, 2016 IL 118728, ¶ 30; *People v. Bock*, 242 Ill. App. 3d 1056, 1071 (1993). Moreover, the essence of defendant's argument is the same as was raised before the trial court, which is, defendant's sentence is excessive based on the mitigating factors and facts of the case. Accordingly, we find no forfeiture.

¶ 31 "It is well established that a trial court has broad discretionary authority in sentencing a criminal defendant." *People v. Evans*, 373 Ill. App. 3d 948, 967 (2007). "An appellate court

typically shows great deference to a trial court's sentencing decision since the trial court is in a better position to decide the appropriate sentence." *Id.* Accordingly, a trial court's sentencing decision will not be overturned absent an abuse of discretion. *Id.* "The reviewing court may not reverse the sentencing court just because it could have weighed the factors differently." *People v. McWilliams*, 2015 IL App (1st) 130913, ¶ 28 (citing *People v. Streit*, 142 Ill. 2d 13, 19 (1991)).

¶ 32 "In determining an appropriate sentence, the trial judge is further required to consider all factors in aggravation and mitigation which includes defendant's credibility, demeanor, general moral character, mentality, social environments, habits, and age, as well as the nature and circumstances of the crime." *Id.* "If the sentence imposed is within the statutory range, it will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense." *People v. Starnes*, 374 Ill. App. 3d 132, 143 (2007) (citing *People v. Fern*, 189 Ill. 2d 48, 54 (1999)).

¶ 33 Here, defendant was convicted of aggravated robbery under section 18-1(b)(1) of the Criminal Code of 2012 (720 ILCS 5/18-1(b)(1) (West 2014)), which is a Class 1 felony (720 ILCS 5/18-1(c) (West 2014)). The sentencing range for a Class 1 felony is a term of 4 to 15 years. 730 ILCS 5/5-4.5-30(a) (West 2014). Defendant received a sentence of eight years, which is in the middle of the sentencing range. Defendant does not challenge his three-year sentence for aggravated battery.

¶ 34 At the sentencing hearing, the following mitigating evidence was presented. Defendant submitted a letter from a neighbor, Charles Holgren, who is an attorney. Holgren stated that he has known defendant and his family for over 40 years and lived half a block away from the family home on Oakdale Avenue. Defendant was a good neighbor and often offered to mow Holgren's lawn or shovel snow. He noted that defendant is unable to read and would come to

Holgren's house and ask Holgren to read a letter defendant had received. Holgren often helped defendant with a response if needed. Holgren also detailed how sometimes defendant or his brother would give him an old artifact from their home without seeking money. For payment, Holgren would deliver to them "a strawberry cake, butter pecan ice cream, a large bottle of root beer, and a box of peanut butter cookies."

¶ 35 Defense counsel also argued defendant's developmental problems and alcohol dependency in mitigation. Counsel noted that defendant had been "a slow learner" and could not complete high school due to his intellectual problems and gangs in the community. Counsel further discussed that defendant had been consuming a quart of beer a day at the time of the offense, but was attending Alcoholic Anonymous in jail. Counsel pointed out that defendant had no prior felonies, as shown in defendant's presentence investigation (PSI), and asked for probation. Counsel read a letter defendant had prepared, which stated:

"Your Honor, I can't read and write so I asked my attorney if she would read this on my behalf.

I would like to say thank you to my family and friends who stood behind me and made every effort to show their support for me. I would like to express I'm very sorry to everyone who had suffered because of this unfortunate misunderstanding and incident."

¶ 36 In aggravation, the State argued the facts of the case and the violent nature of the attack on Sanchez, highlighting the scratches on neck and large bruises on her arms. The State also presented a victim impact statement from Sanchez, which stated:

"On January 23, 2015 while I was working at my business, I was the victim of an assault. I was in shock and injured and rushed to the hospital to be

taken care of by the doctors. They treated my injuries and they prescribed medication for the pain. I went home with my daughter who took care of me throughout the night. Thankfully for the medicine, I calmed down, but was unable to sleep. My pain and my preoccupation continued during the following weeks.

The very next day, I had to return to the hospital because the pain was too great and I couldn't sleep. They prescribed stronger medication to help me relax but I kept having nightmares and could not sleep and would get up throughout the night.

The first few days I did not leave my house because I was very fearful. I tried returning back to work to continue with my daily routine but I was terrified and had anxiety every time I was alone and I kept thinking something bad was going to happen again. My daughter even asked for some time off of work to be with me but I continued to get worse. I began sleeping a lot and feeling really sad all the time. I had to take a leave of absence from work for several months and my daughter quit her job in order to take care of my business.

My daughter was so worried about me because I was not getting better. We began seeking therapists hoping it would help me with my trauma.

After the incident my life changed significantly. I have many problems remembering things, I had to stop working, I continue to have nightmares, I do not leave my home with the same confidence I once had, and I depend on others so as not to fall into depression. I am afraid of being alone and I miss my normal lifestyle.

My daughter and I were greatly affected by this crime. She stopped working to take care of me and my business. We depend solely on one income to survive. I had to ask for assistance through the city to pay for my medical expenses because I had no money to pay them.

I still go to therapy as I am struggling constantly to take back my life.”

¶ 37 Following these arguments, the trial court entered its finding. The court stated that it listened to the presentations in aggravation and mitigation, the victim impact statement, and letter presented by the defense. The court “considered the facts of the case, as well as the statutory factors in aggravation and mitigation.” The court then imposed defendant’s sentences. After imposing the sentences, the court stated:

“The Court was impressed with the facts of the case, the significant injuries that had occurred to this woman, the resulting impact and how it had – it has and continues to significantly change her life and alter her life.

I looked at the PSI, there is --- no, in terms of psychological, [defendant] had reported that he has not had any mental health intervention nor has he been diagnosed with a mental health disorder. And that he stresses that there is no need for mental health intervention at the time. His problem, according to the mitigation presented, is alcohol. And despite having apparently a loving family and kind neighbors, they weren’t able to prevent something very tragic, very traumatic to happen to another pillar of the community, a merchant within the community.

And so that’s why the Court is issuing eight years in the Illinois Department of Corrections on the aggravated robbery concurrent with the three

years aggravated battery sentence concurrent. [*Sic.*] I think anything less would deprecate the serious nature of this offense. And so the Court feels that the sentence is more than appropriate.”

¶ 38 In his argument, defendant attempts to minimize the attack on Sanchez. Defendant describes the attack as causing “only minimal physical harm” and she “returned to work with no long term physical injuries and without any financial loss.” He also questions Sanchez’s credibility as a way to minimize the crime as “spontaneous, transitory, and heavily influenced by an alcohol problem.” Defendant further discusses the proceeds of the aggravated robbery as a “pittance” compared to the costs of his incarceration. We are not persuaded by defendant’s arguments.

¶ 39 The record clearly shows that the trial court fully considered the evidence in aggravation and mitigation alongside the facts of the case before imposing a sentence it believed was appropriate for the seriousness of the crime. While defendant had no prior felonies, the PSI disclosed that defendant was convicted of multiple misdemeanor offenses over a period of several years. Moreover, the court repeatedly found Sanchez to be very credible and the attack on her to be serious. We have reviewed the photographs of Sanchez’s injuries. Sanchez had numerous scratches around her neck and upper chest. She also had a very large deep bruise on her upper right arm and a smaller bruise on her left arm. These injuries show the violent nature of the attack. We further reject defendant’s attempt to diminish the psychological injury inflicted on Sanchez as shown in both her trial testimony and her victim impact statement. The mere fact that she returned to work does not lessen the trauma she suffered, and as she noted in her victim impact statement, her daughter has had to quit her job to work in Sanchez’s cleaners in order to help support the family. This is not an insignificant harm.

¶ 40 We are also not persuaded by the cases relied on by defendant. In *People v. Stacey*, 193 Ill. 2d 203, 210 (2000), the supreme court found the sentences were manifestly disproportionate to the nature of the offenses and held that the trial court abused its discretion by sentencing the defendant to two consecutive 25-year prison terms. There, the defendant briefly grabbed the breasts of two teenage girls, who were fully clothed at the time, and made lewd comments and gestures. *Id.* While such behavior was appalling and harmful, the supreme court concluded it was not severe enough to warrant a 25-year sentence and the court stated it had to adhere to the constitution's mandate that penalties be determined according to the seriousness of the offense. *Id.* at 211 (citing Ill. Const.1970, art. I, § 11). In reaching its holding, the supreme court emphasized it was not reweighing any aggravating or mitigating factors. *Id.*

¶ 41 In *People v. Center*, 198 Ill. App. 3d 1025, 1033 (1990), the defendant was convicted of burglarizing a laundromat. At sentencing, the State presented the defendant's criminal record, which contained two prior Class 2 felony convictions, one for robbery and one for burglary. *Id.* The trial court reviewed the defendant's personal history and found him eligible for a Class X sentence and sentenced the defendant to 15 years. *Id.* at 134. After reviewing the defendant's personal history, the reviewing court found no aggravating factors other than the two previous convictions and thus concluded that the defendant possessed the capability and potential for rehabilitation. *Id.* at 135. The *Center* court found the 15-year sentence to be excessive and reduced the sentence to 7 years. *Id.*

¶ 42 More recently, in *People v. Busse*, 2016 IL App (1st) 142941, ¶¶ 15, 29-30, the reviewing court found the defendant's 12-year sentence was excessive for stealing \$44 from a university vending machine. The court acknowledged the defendant's criminal history, but found that "the legislature created Class X sentencing to protect the public from murders and rapists, not penny-

ante pilferage” and that given the previous number of years the defendant had spent in prison, another 12-year term to make an impression on him would be “ineffectual.” *Id.* ¶¶ 31–32. It further noted the defendant’s crime was “motivated by poverty rather than malice” and that the defendant was not armed and did not use a weapon of any sort. *Id.* ¶¶ 34, 29. The *Busse* court concluded that the defendant’s 12-year sentence would cost taxpayers almost a quarter million dollars. *Id.* ¶ 37.

¶ 43 Here, defendant’s aggravated robbery is readily distinguishable from these cases. Notably, defendant was armed with a weapon which he told Sanchez was a gun and struck her with it. He also attacked her and caused scratches and bruising as well as psychological trauma. The small amount recovered from the cleaners does not render the personal attack on Sanchez any less harmful. We also reject defendant’s argument comparing the amount of robbery proceeds to the cost of incarceration. This fails to account for the physical attack that significantly factored into this case. Moreover, “the trial court is presumed to have performed its obligations and considered the financial impact statement before sentencing a defendant.” *People v. Sauseda*, 2016 IL App (1st) 140134, ¶ 22. Since defendant received a sentencing within the appropriate sentencing range for aggravated robbery, we conclude that the trial court did not abuse its discretion in imposing defendant’s sentence.

¶ 44 Based on the foregoing reasons, we affirm defendant’s conviction and sentence.

¶ 45 Affirmed.