

NOTICE
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2011 IL App (4th) 100725-U

Filed 8/18/11

NO. 4-10-0725

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Macon County
RODNEY L. BURTON,)	No. 09CF1340
Defendant-Appellant.)	
)	Honorable
)	Lisa Holder White,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Steigmann and McCullough concurred in the judgment.

ORDER

- ¶ 1 *Held:* (1) We affirm defendant’s conviction of leaving the scene of an accident resulting in death because the evidence was sufficient to sustain his guilt beyond a reasonable doubt.
- ¶ 2 (2) We affirm the trial court’s sentence of defendant to an eight-year prison term because the trial court did not abuse its discretion.
- ¶ 3 In June 2010, following a jury trial, defendant, Rodney L. Burton, was convicted of leaving the scene of an accident and failing to report the resulting fatality (625 ILCS 5/11-401(b), (d) (West 2008)), a Class 1 felony. In July 2010, the trial court sentenced defendant to eight years’ imprisonment.
- ¶ 4 Defendant appeals, arguing (1) the verdict should be set aside because defendant was not proved guilty beyond a reasonable doubt, and (2) the court abused its discretion in sentencing the defendant to a term of eight years’ imprisonment. We disagree and affirm.

¶ 5

I. BACKGROUND

¶ 6 In September 2009, the State charged defendant with one count of leaving the scene of an accident and failing to report a fatal motor vehicle accident on North Street in Argenta. The State alleged defendant was involved in a motor vehicle accident resulting in the death of Timothy A. Buckley. Defendant was charged with both failing to stop at the scene and failing to report the accident to police.

¶ 7 At trial, Sheri Cafin, defendant's girlfriend since September 2007, testified she and defendant started drinking in Champaign on May 10, 2008, around 5 or 6 p.m. Cafin testified she and defendant went to a bar in Decatur in defendant's black 2004 Monte Carlo. She testified they left the bar at 2 a.m. According to Cafin's testimony, after passing through Argenta on their way home to DeWitt, they had an argument, and defendant made Cafin get out of the vehicle. She testified he turned around to come back for her, but she hid in a ditch, and he drove past her. About 15 minutes later, defendant came back, and Cafin got back in the car.

¶ 8 Cafin testified defendant told her he "hit somebody" in Argenta. According to her testimony, defendant said he went back into Argenta where he thought she had gone. He was looking to the left and to the right for her and all of a sudden looked up "and there was a guy kind of knelt half down in the road and he hit him." Defendant told her he got out of the car and asked the man if he was all right, but he left after the man told him to go away. Cafin testified defendant later told her he would kill her and her family if she ever told anybody. Cafin had a prior conviction for deceptive practices.

¶ 9 Elizabeth White, who lived on North Street in Argenta, testified a loud impact noise woke her at approximately 2:30 a.m. on May 11, 2008. Deputy Chad Wayne testified he

was detailed to the scene in Argenta at 3:09 a.m. Wayne testified, upon arrival, he observed a man lying in the roadway at or near the intersection of Pennsylvania and North Street. Several paramedics and firefighters were already in the area.

¶ 10 Todd Whitaker, a registered nurse at Decatur Memorial Hospital and a qualified paramedic, testified he was called to the scene at approximately 2 or 3 a.m. on May 11, 2008. Whitaker testified he and a firefighter were the first on the scene but neither was able to detect a pulse or brain response. Whitaker testified his examination of the body suggested a traumatic accident.

¶ 11 Dr. Jessica Bowman, a forensic pathologist, testified the cause of death was due to internal exsanguination or bleeding out within the body cavities. She testified, in her opinion, decedent's blunt force injury was most consistent with a motor vehicle incident. Based on the decedent's injuries, he would have died from lack of oxygen to the brain within three to five minutes; however, he likely would have lost consciousness in a matter of seconds after impact.

¶ 12 Deputy James Root testified he searched the area of the incident following his arrival at approximately 3:30 a.m. and found a black pushpin, which is a piece of plastic used to hold body parts of a vehicle together. The pin was approximately 20 feet from the body. The push pin did not appear to have been run over.

¶ 13 Richard Randall, an auto body repairman, testified he worked on defendant's Monte Carlo in January 2008 because Cavin ran the car through a ditch. Randall testified he installed and painted a new front bumper and made a few other minor fixes. He testified he installed the front bumper using plastic retaining pins. According to Randall, he either re-used the old pins or used pins from his own supply (or a combination of both). He testified he

repaired what was necessary on the exterior of the vehicle to make the vehicle look good for resale. He testified some damage underneath the car was not repaired. Randall testified he uses the same kind of black paint from the same supplier on all the vehicles he paints. He performed the work for \$500 and the parts cost \$1,576. Defendant received an insurance settlement for this incident. Although the amount of this settlement does not appear in the record, apparently it exceeded defendant's expenditures because Cagin testified she had threatened to turn defendant in for insurance fraud.

¶ 14 Scott Baum, owner of Baum Chevrolet Buick, testified defendant made inquiries about trading in a 2004 Monte Carlo to the dealership on May 17, 2008. Baum testified after defendant traded in the Monte Carlo, an in-house inspection of the vehicle revealed physical damage and needed mechanical repairs. He testified the front bumper cover assembly and cover extension were removed, replaced, and painted. Baum stated the repairs cost \$1,786.89.

¶ 15 Cagin testified she told a friend, Bernice Fisher, and police officer Eric Stiverson on August 22, 2009, what she knew about the incident. On August 22, she and defendant had been arguing when defendant again told her to get out of his car. Cagin called Fisher to pick her up. While in Fisher's car, defendant called her and she told him she was going to turn him in to the police. She testified defendant told her, while on speakerphone, if she turned him in, he would just blame it on her. Fisher testified she heard defendant make this statement on the speakerphone. While meeting with Deputy Eric Stiverson, she received another phone call from defendant. Stiverson testified he heard Cagin tell defendant, "You know you killed him. I can't live with this anymore, I am going to tell." Cagin's statement to defendant does not appear in Stiverson's report. Stiverson heard defendant on the speakerphone say, "[I]f you want to fucking

tell the police, go ahead and do it, ... you won't do it."

¶ 16 Cadin testified she waited 15 months to report defendant to the authorities because he threatened her and her family, and she was afraid of him. When she would mention the incident to defendant, he would beat her badly. However, the State did not produce any medical records.

¶ 17 Sergeant James Hermann, a detective on the night Cadin reported defendant to the authorities, testified on August 26, 2009, he conducted an interview with defendant in regard to decedent's death. Defendant told Hermann he had no knowledge of the hit and run death. Regarding the \$1,786.89 worth of damage to the front end of defendant's Monte Carlo found by Baum Chevrolet, defendant related to Hermann he had been in a car accident with Cadin in 2007 and those repairs had been done before May 2008. According to Hermann's testimony, defendant said Cadin was trying to get him kicked out of the house and end their relationship.

¶ 18 Brent White, the collision repair manager at White's Auto Body, testified he examined the Monte Carlo on September 29, 2009, for the Macon County sheriff's department. While removing the front bumper cover, he noticed both General Motors (GM) and aftermarket retaining pins. The mark of the pin found at the scene was GM5973400, a typical GM part and number. White testified a collision, rather than simply driving, would typically cause retaining pins to fall out.

¶ 19 Dr. Kimberly Bradley, a trace evidence examiner for the Illinois State Police, testified she compared a paint sample from the front bumper of the Monte Carlo to a paint chip found on the victim's clothing. The paint sample from the front bumper consisted of two layers, a clear coat over a black coat. The black paint chips recovered from the victim's clothing

appeared to be automotive paint and had two layers, a clear coat over a black coat. Dr. Bradley testified she was unable to find a significant difference in color, layer sequence, or chemical composition in the two samples. In her opinion, the paint found on the victim's clothing was similar to the paint from the front bumper of the Monte Carlo and could have originated from the same source.

¶ 20 After hearing all the evidence, the jury found defendant guilty of leaving the scene of an accident involving death. On July 29, 2010, the trial court held a sentencing hearing and considered evidence in aggravation and in mitigation. The court also considered defendant's prior history as it related to violations of traffic laws. In imposing defendant's sentence, the court explained:

"The defendant has shown a complete disregard for the traffic laws and repeatedly disregarded those laws and had no concern about the affect on others. The Court was appalled at the testimony regarding his behavior when he was arrested for the DUI, also with respect to his behavior while operating his motor vehicle. It's apparent that he doesn't care who it affects or who else is put in danger ***. The Court does believe that it is important to send a strong message that if you're involved in an accident, it is your obligation to report that[,] and it is not appropriate *** to leave a fellow human being lying in the road with no assistance when you know that you have hit someone."

The court then sentenced defendant to eight years' imprisonment.

¶ 21 In August 2010, defendant filed a motion to reconsider sentence. Defendant argued the sentence was manifestly disproportionate to the nature of the offense and constituted an abuse of discretion. In September 2010, the trial court denied defendant's motion to reconsider sentence.

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 On appeal, defendant argues (1) the evidence was insufficient to prove him guilty of the charged offense beyond a reasonable doubt and (2) the trial court abused its discretion in sentencing the defendant to a term of eight years' imprisonment.

¶ 25 A. Sufficiency of the Evidence

¶ 26 When a defendant claims the evidence against him is not sufficient to sustain his conviction, this court considers whether, 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. Thomas*, 178 Ill. 2d 215, 232, 687 N.E.2d 892, 899 (1997). The trier of fact has the responsibility to weigh the evidence, resolve conflicts in testimony, and draw reasonable inferences from basic facts to ultimate facts. *People v. Jackson*, 232 Ill. 2d 246, 281, 903 N.E.2d 388, 406 (2009).

¶ 27 A reviewing court's function is not to retry the defendant. *People v. Sutherland*, 223 Ill. 2d 187, 242, 860 N.E.2d 178, 217 (2006). This court will not substitute its judgment for the trier of fact's regarding evidentiary or credibility determinations. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25, 920 N.E.2d 233, 240 (2009). This court will not reverse a conviction unless "the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reason-

able doubt of defendant's guilt." *People v. Wheeler*, 226 Ill. 2d 92, 115, 871 N.E.2d 728, 740 (2007). Applying this standard to the present case, we conclude the State presented sufficient evidence to support defendant's conviction.

¶ 28

1. *Defendant's Confession*

¶ 29

Defendant argues as if his statements to Cafin were the State's only evidence against him, contending his extrajudicial confession was not supported by sufficient corroborating evidence independent of that statement to establish a crime occurred beyond a reasonable doubt. Defendant also contends the physical evidence failed to link him to the alleged incident.

¶ 30

Under Illinois law, an offense requires proof of two distinct propositions beyond a reasonable doubt: (1) a crime occurred, *i.e.*, the *corpus delicti*; and (2) the crime was committed by the person charged. *People v. Sargent*, 239 Ill. 2d 166, 183, 940 N.E.2d 1045, 1055 (2010). Proof of the *corpus delicti* cannot be provided by the defendant's extrajudicial statement alone. *Sargent*, 239 Ill. 2d at 183, 940 N.E.2d at 1055. Where a defendant's extrajudicial statement is part of the proof of the *corpus delicti*, the prosecution must also adduce corroborating evidence independent of the defendant's statement. *Sargent*, 239 Ill. 2d at 183, 940 N.E.2d at 1055. If a confession is not corroborated in this way, a conviction based on the statement alone cannot be sustained. *People v. Willingham*, 89 Ill. 2d 352, 358-59, 432 N.E.2d 861, 864 (1982).

¶ 31

In this case, Cafin testified defendant told her he had "hit somebody" in Argenta and he "drove off." The State presented the following evidence to corroborate defendant's confession. Elizabeth White testified she heard a loud impact noise. The victim's body was discovered in the road in Argenta, near the home of Elizabeth White, by police the same night defendant allegedly confessed. Dr. Bowman testified the victim's blunt force injury was

consistent with a motor vehicle incident.

¶ 32 An inspection of the accident area revealed a black pushpin typically used to hold vehicle parts together. The pushpin had a GM logo and was found approximately 20 feet from the victim's body. Defendant drove a black GM vehicle. Brent White testified pushpins can be lost in collisions and would not typically fall out while driving. The pushpin did not appear to have been run over by any vehicles.

¶ 33 Defendant traded his Monte Carlo in six days after the incident. The dealership found damage to the front of the vehicle. The State presented testimony paint from the Monte Carlo's bumper and paint chips found on the victim could have originated from the same source.

¶ 34 Defendant contends the testimony regarding the paint samples is not enough to establish his guilt beyond a reasonable doubt. However, a rational trier of fact could reasonably infer the two paint samples originated from the same source based on the evidence in this case.

¶ 35 Finally, 15 months after the alleged incident, Cagin's friend and a police officer overheard defendant tell Cagin he would tell the authorities it was Cagin who was driving if she reported his offense.

¶ 36 In light of the foregoing, the evidence corroborates defendant's statement to Cagin he hit the victim with his Monte Carlo on May 11, 2008, resulting in the victim's death. The evidence is not so unsatisfactory as to raise a reasonable doubt of guilt.

¶ 37 *2. Cagin's Credibility*

¶ 38 Defendant also contends Cagin's testimony was not credible. Defendant points to Cagin's motives, prior convictions, and substance-abuse issues. Defendant also points to inconsistencies between Cagin's testimony and the evidence, which he argues demonstrates Cagin

was lying. However, the jury as the trier of fact apparently believed Cafin's testimony and resolved any conflicts in the evidence. We will not substitute our judgment for that of the jury. The jury had the opportunity to judge the credibility of the witnesses.

¶ 39 Further, defendant argues he never confessed to Cafin. According to defendant, Cafin was drunk and mad when she said he confessed to her. Defendant notes Cafin told police about this confession 15 months after he allegedly confessed. Defendant also claims the statements heard by Stiverson and Fisher were in reference to Cafin's accident with the vehicle in 2007, not the alleged incident in May 2008, because Cafin was threatening to turn him in for insurance fraud. Additionally, defendant argues Cafin's statement to defendant, "you know you killed him," was not included in Stiverson's report and is mere recollection of a conversation from two years ago.

¶ 40 This court will not reverse a conviction " 'simply because the defendant tells us a witness was not credible.' " *People v. Brown*, 185 Ill. 2d 229, 250, 705 N.E.2d 809, 819 (1998) (quoting *People v. Byron*, 164 Ill. 2d 279, 299, 647 N.E.2d 946, 956 (1995)). Defendant's arguments regarding Cafin's credibility address functions of the jury, not this court. Having heard Cafin's testimony, the jury was fully aware of her alleged credibility issues. The jury knew Cafin was not in the car when the incident occurred, and it was also aware Cafin was intoxicated on the night of the incident. Her prior conviction for deceptive practices and her motive to lie were brought to the attention of the jury.

¶ 41 The trial court instructed the jury when determining the weight to be given to a statement, it should consider all of the circumstances under which it was made. It was the jury's function to draw conclusions based on the evidence and to decide whether there was reasonable

doubt as to defendant's guilt. The jury evidently chose to believe Cafin's testimony.

¶ 42 B. Defendant's Sentence Term

¶ 43 It is well settled a trial judge's sentencing decisions are entitled to great deference and will not be altered on appeal absent an abuse of discretion. *People v. Jackson*, 375 Ill. App. 3d 796, 800, 874 N.E.2d 592, 595 (2007). A trial court abuses its discretion only when (1) its decision is arbitrary, fanciful, or unreasonable, or (2) no reasonable person would take the view adopted by the court. *People v. Donoho*, 204 Ill. 2d 159, 182, 788 N.E.2d 707, 721 (2003). Consequently, the reviewing court may not substitute its judgment for that of the trial court merely because it would have weighed factors in mitigation and aggravation differently. *People v. Stacey*, 193 Ill. 2d 203, 209, 737 N.E.2d 626, 629 (2000). Unless the sentence is grossly disproportionate to the nature of the offense committed, the sentence should be affirmed. *People v. Rogers*, 364 Ill. App. 3d 229, 247, 846 N.E.2d 184, 199 (2006).

¶ 44 The sentence of imprisonment for a Class 1 felony shall not be less than 4 years and not more than 15 years. 730 ILCS 5/5-8-1(a)(4) (West 2008). Defendant asserts his eight-year prison sentence was excessive. Specifically, defendant argues the trial court did not give due consideration to the factors in mitigation. However, defendant forfeited this issue by failing to raise it in his written motion to reconsider sentence. In his reply brief, defendant asserts, without any reasoning, the issue should be reviewed under the plain-error doctrine. However, defendant has also forfeited the issue of plain error by his failure to comply with Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008). Supreme Court Rule 341(h)(7) requires defendant's brief to include "[a]rgument which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on." Defendant's

plain-error argument merely asks the court to employ the plain-error rule because the court did not consider the factors in mitigation. Assuming the issue was not forfeited for failure to comply with Illinois Supreme Court Rule 341(h)(7), the issue fails on its merits. Appellate courts presume, absent contrary evidence in the record, a trial court considered all relevant factors in determining a sentence. *People v. Mitchell*, 395 Ill. App. 3d 161, 168, 916 N.E.2d 624, 630 (2009).

¶ 45 Defendant also alleges the trial judge placed too much emphasis on his lack of remorse. Defendant forfeited this issue as well by failing to raise it in his written motion to reconsider sentence. However, even if we looked at the merits of his argument, defendant failed to cite any remarks by the trial court to indicate it considered his lack of remorse in aggravation.

¶ 46 Further, defendant asserts this crime is unusual and is the result of circumstances unlikely to reoccur. Defendant claims his character, attitude, and lack of significant criminal history indicate he is unlikely to commit another crime. However, according to the presentence investigation report, defendant has five Class A misdemeanor convictions and three prior felony convictions. Further, defendant was convicted of a DUI and a high-speed chase after Buckley's death. His very behavior contradicts his claim this crime was the result of circumstances unlikely to reoccur.

¶ 47 The trial court did not abuse its discretion when it sentenced defendant to an eight-year prison term.

¶ 48 III. CONCLUSION

¶ 49 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State its \$75 statutory assessment against defendant as costs of this

appeal.

¶ 50

Affirmed.