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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CDF-2655
)	
ROBERT E. WILLIAMS,)	Honorable
)	Timothy Q. Sheldon,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Presiding Justice Burke and Justice Jorgensen concurred in the judgment.

ORDER

- ¶ 1 *Held:* The State's evidence was sufficient to establish defendant's participation in the armed robbery and that he committed armed robbery with a firearm beyond a reasonable doubt. The trial court also properly applied the 15-year sentence enhancement. The trial court did not abuse its discretion when it sentenced defendant, as defendant and two cooperating witnesses were not similarly situated. We affirmed the judgment of the trial court.
- ¶ 2 In February 2010, following a bench trial, defendant, Robert E. Williams, was found guilty of committing the offenses of armed robbery, aggravated robbery, obstructing justice, and obstructing a peace officer. The trial court sentenced him to a total of 25 years' imprisonment.

Defendant timely appeals, challenging the sufficiency of the evidence and his sentence. For the reasons that follow, we affirm defendant's conviction and sentence.

¶ 3 The record reflects that, on September 14, 2009, at approximately 10 p.m., Ramesh Panchal finished closing Angelina's Food and Liquors in Aurora. He was with a friend, Syed Hussain. As they exited the store, they were robbed at gunpoint. Hussain and Panchal called 911 and the police responded approximately 10 to 20 minutes later. Following an investigation, defendant was arrested. In November 2009, a grand jury indicted defendant and charged him with committing four counts of armed robbery; two counts of aggravated robbery; one count of obstructing justice; and one count of obstructing a peace officer.

¶ 4 On January 19, 2010, the trial court conducted a bench trial. The State's first witness was Syed Hussain, who testified that at approximately 9:30 p.m. on September 14, 2009, he was at Angelina's Food and Liquors; he was visiting with a friend who worked there, Ramesh Panchal. Panchal was closing the store at approximately 10 p.m., and Hussain waited outside for him. Panchal came out, and the two were near Hussain's car. Hussain observed a man walk by holding a cell phone. A second man approached Hussain and asked him for the time. That second man then pulled out a gun and told them to "take everything out" that they had. Hussain also observed a third man near a post office box, who also displayed a gun. Hussain testified the three men appeared to be wearing baggy pants and hooded sweatshirts.

¶ 5 Hussain testified that one of the men took his cell phone and his wallet. Hussain testified that his wallet contained his driver's license, credit cards, medical insurance cards, and money. Panchal's property was also taken from his person. Hussain described and identified the type of firearms that the men used during the incident. Hussain could not identify either of the two individuals who

displayed a weapon. After taking the men's property, the three men ran away. Panchal called the police, and the police arrived 10 to 20 minutes later. At trial, Hussain identified his cell phone, his wallet, his driver's license, his credit cards, his medical insurance cards, and the cash he was carrying.

¶ 6 Jamaal Cannon, who was criminally charged for the September 14, 2009, incident, testified for the State. Cannon entered into an agreement with the State to testify truthfully, and in exchange, his charges of armed robbery and aggravated robbery were reduced to misdemeanor theft.

¶ 7 Cannon testified that on September 14, 2009, he drove to Aurora with Marcus Baines and Ricardo Findlay. While in Aurora they visited with defendant, who was a friend of Findlay's. They arrived at approximately 9 p.m., and about 30 to 60 minutes later, defendant, Findlay, and a man named "Smiley" left. Cannon left 10 to 15 minutes later and walked to Angelina's, which was behind the apartment complex, to purchase cigarettes. Angelina's was closed, so Cannon went to a gas station. After purchasing cigarettes, Cannon walked back to the apartment complex. Cannon testified that Baines was sleeping in his car. Cannon testified that he was attired in a white t-shirt and jeans; Baines was wearing a red t-shirt. Cannon testified that Findlay was wearing a black cap, a black hoodie, and jeans, and defendant was wearing a black hoodie underneath a black jacket.

¶ 8 Approximately 10 minutes after Cannon returned, he observed defendant and Findlay running toward him; defendant was carrying a red and white bag. Defendant stated, "[w]e just hit a lick." Cannon explained that the phrase meant that they either robbed someone or found something. Inside the red and white bag were a wallet, a cell phone, a gold chain, keys, and receipts inside. Defendant said the items came from the individuals they just robbed. Defendant left the parking lot and went to his girlfriend's apartment. Cannon, Findlay, and Baines looked into the bag, and Findlay took the

gold chain and the keys; he broke the cell phone and threw it. After about five minutes, defendant came back out and took the bag. The four of them went to Cannon's car, and Cannon checked the car's battery under the hood. At that time, a police officer approached and asked for identification.

Defendant exited the vehicle and ran; a police officer chased after him. Cannon, Baines, and Findlay attempted to drive away, but another squad car immediately pulled them over.

¶ 9 Cannon identified a firearm that he had observed defendant carrying. Cannon also identified the bag he observed defendant carrying, which had held the items. Cannon identified the wallet and the gold chain that had been in the bag. On cross-examination, Cannon admitted that he told the police he had driven to a liquor store; the people in the store told him it was closed; and he drove back to the parking lot at the apartment complex, but that was not the truth.

¶ 10 Marcus Baines next testified for the State. Baines was also charged as a co-defendant in this case and entered into a plea agreement to testify truthfully and in exchange, the charges against him were reduced. Baines testified that on September 14, 2009, he left Chicago and came to Aurora with Cannon and Findlay. Cannon was driving, and they arrived at an apartment complex in Aurora; defendant was a friend of Findlay's. They arrived at the parking lot of the apartment complex between 8 and 9 p.m. They, defendant, and another man by the name of Smiley were together. After standing around for 20 to 30 minutes, defendant, Findlay, and Smiley left. Baines's testimony regarding the clothing that everyone wore was substantially similar to Cannon's testimony. Cannon left to get some cigarettes but he came right back.

¶ 11 Baines further testified that approximately 10 to 15 minutes later, defendant and Findlay came running back to the car and defendant said that they had "just hit a lick." Baines explained that the phrase meant they "got something for nothing." After awhile, he, Cannon, Findlay, and

defendant returned to the car to leave. The car did not start so he and Cannon got out of the car to start it. The police arrived, and he gave his identification to the police. Defendant then got out of the vehicle and began running. They all were taken into police custody, and at the police station, defendant told Baines that he had taken wallets, a cell phone, money, and a bag.

¶ 12 On cross-examination, Baines acknowledged that Cannon left to purchase cigarettes and left before Findlay and defendant. Baines allowed the police to search his vehicle; he did not observe anyone with firearms. Smiley never returned to the vehicle. On redirect examination, Baines testified that the items from the robbery were discovered in his car by the police during the search.

¶ 13 Ramesh Panchal testified that on September 14, 2009, he was working at Angelina's Food and Liquor Store in Aurora. Hussain came in the store at 9:30 p.m.; the store closed at 10 p.m. Hussain was waiting outside of Angelina's for him. As the two men were outside, a man approached Hussain with a gun. Panchal described the man as African American, 5' 8" to 5' 9" tall, wearing a black hoodie; that man took Hussain's cell phone and wallet. Another man approached Panchal and pointed a gun at him. He described that man as African American, 5' 6" to 5' 8" tall, wearing a black hoodie; that man took his gold chain from around his neck, his cash, his wallet, papers, and a plastic shopping bag. The two men ran from Hussain and Panchal toward the apartment complex through the fence. Panchal followed them for a little while. Panchal identified his gold chain, his bag, his wallet, his paperwork, his bank card, his car keys, and the store keys.

¶ 14 Officer Michael Ortinau from the Aurora police department testified that, on September 14, 2009, he was on patrol and dispatched to the Covey apartment complex looking for suspects in an armed robbery that had just occurred at Angelina's. The dispatch identified two male black subjects. He was on foot at the apartment complex and observed four black males leaving an apartment

building and approaching a vehicle. Two of the men got into the vehicle, and the other two men remained outside. Ortinau asked all the individuals for identification; defendant told him his name was Jerome Kirk. Ortinau observed that defendant appeared to be nervous and sweating. Defendant then took off and ran from Ortinau. Ortinau chased defendant and yelled for defendant to stop. Defendant was apprehended by other officers.

¶ 15 Officer Michael Townsend of the Aurora police department responded with Ortinau to the armed robbery. He observed Ortinau with four individuals. Townsend saw one of the individuals run from the vehicle, and he ran after him. The individual was taken into custody. Townsend searched the area near the vehicle and discovered a pistol. Townsend identified the firearm.

¶ 16 Officer Chris Bekielewski of the Aurora police department testified that he and Officer Cosentino responded to the dispatch of the armed robbery. They were walking along a nearby trail and observed an individual running from the other officers. The individual was identified as defendant. Defendant indicated that he ran because he had warrants.

¶ 17 Officer David Sheldon of the Aurora police department also responded to the dispatch of the armed robbery. Sheldon searched the apartment complex and discovered a wallet in the bushes. Investigator Hillgoth of the Aurora police department testified that he effected a stop of a vehicle that was attempting to exit the apartment complex. Hillgoth identified Cannon as the driver. Officer Todd Fancsali of the Aurora police department testified regarding a cell phone that he collected as evidence. Francis Senese, who was a latent print supervisor for the Joliet forensic science lab, testified that he found no suitable fingerprints for comparison.

¶ 18 Officer Christopher Coronado of the Aurora police department testified that he was on patrol and dispatched to perform an inventory search of the vehicle Cannon was driving. Coronado

collected a gold chain necklace from the rear passenger seat of the vehicle. Coronado also collected a plastic bag, which contained a brown wallet, some coins, and other money. Inside the wallet was a driver's license in Panchal's name. Coronado collected two sets of keys. Coronado further testified that, on the following day, he was dispatched again to the area, where he recovered a silver revolver in the grass.

¶ 19 Officer Irene Corp, an evidence technician with the Aurora police department, testified that on September 14, 2009, she was dispatched to investigate an armed robbery. Corp photographed Panchal's recovered wallet and identification card, which were in the vehicle Cannon had been driving. Corp also photographed a handgun found underneath a parked car and other points of reference. Officer Armando Montemeyer, an evidence technician, testified that he went to the department's storage and collected evidence from the vehicle that Cannon had been driving. He collected a plastic shopping bag, a gold necklace, currency, and cell phones.

¶ 20 Detective Angel Nieves of the Aurora police department testified that he participated in the investigation of the armed robbery. On September 15, 2009, at approximately 1:30 a.m., Nieves was at the police station with defendant; Officer Robert Mient was also present. After Nieves gave defendant his *Miranda*, defendant told him that he ran from the officers because he knew he had a traffic warrant. Defendant stated that he was at his girlfriend's apartment at 2130 Wolcott in Aurora all day and that evening he was hanging out with Findlay, Baines, and Cannon. Defendant denied any knowledge of the armed robbery.

¶ 21 The State rested, and the defense called Detective Jeff Koenings of the Aurora police department. Koenings testified that on November 10, 2009, he was present at the Kane County jail with an assistant State's Attorney and Cannon. Koenings and the attorney interviewed Cannon, who

told them that he and the others smoked marijuana, and then he later walked to a gas station and a liquor store. Cannon told them he walked back to the apartment building and that defendant and Findlay arrived a few minutes later. Cannon told them a man called Smiley walked up to the apartment building. Cannon told them he observed defendant place a gun near a car tire in the apartment building parking lot. Defendant offered into evidence a stipulation that staff from the Kane County adult correctional center would testify that on September 18, 19, and 20, 2009, Baines and Cannon were incarcerated in Pod C of the correctional center.

¶ 22 The parties presented closing arguments, and the trial court took the case under advisement. On February 19, 2010, the parties returned to court, and the trial court announced its decision. The trial court read through its decision, including a portion of the facts, the issues presented, the analysis, and the law upon which it relied. The trial court found defendant guilty of Counts 1 through 8, and it determined that Counts 1, 3, 5, and 6 should merge into Counts 2 and 4 as one act, one crime. It found Count 7 and Count 8 were distinct offenses.

¶ 23 On May 6, 2010, the trial court conducted a hearing on defendant's posttrial motion. Following arguments of the parties, the trial court denied the posttrial motion, and continued the case for sentencing. In denying the motion, the trial court commented on the credibility of Cannon and Baines; it found them both credible witnesses. The trial court sentenced defendant to a total of 25 years' imprisonment, and defendant filed a timely notice of appeal.

¶ 24 Defendant contends that the State failed to prove him guilty beyond a reasonable doubt of armed robbery. In support of his contention, defendant argues that the victims were not able to identify him; no one observed him in the possession a weapon; and the weapons allegedly used were not proved to be operable or otherwise dangerous. Defendant further argues that he did not make

any incriminating statements. Defendant asserts that the trial court relied on the inconsistent and improbable testimony of two cooperating accomplice witnesses, which testimony was lacking in credibility and insufficiently corroborated.

¶ 25 When reviewing the sufficiency of the evidence, the standard of review is 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. Wheeler*, 226 Ill. 2d 92, 114 (2007). In a bench trial, it is for the trial court, sitting as the trier of fact, to determine the credibility of witnesses, to weigh evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence. See *People v. McDonald*, 168 Ill. 2d 420, 448-49 (1995). Therefore, “reviewing court will not substitute its judgment for that of the trier of fact on issues of the weight of evidence or the credibility of witnesses.” *People v. Phelps*, 211 Ill. 2d 1, 7 (2004). A conviction based on circumstantial evidence must rest on proof of a conclusive nature that tends to lead to a satisfactory conclusion and produces a reasonable and moral certainty that the defendant and no one else committed the crime. *People v. Williams*, 66 Ill. 2d 478, 484-85 (1977). This court will not disturb a trial court’s finding of guilt unless the evidence is so improbable or unsatisfactory that it raises a reasonable doubt as to the defendant’s guilt. *People v. Brandon*, 197 Ill. App. 3d 866, 874 (1990).

¶ 26 On our review of the record on appeal, we conclude the State’s evidence was sufficient for the trial court to find defendant guilty of committing the offense of armed robbery. For defendant’s conviction for armed robbery to be sustained, the State was required to prove that defendant committed robbery (720 ILCS 5/18-1 (West 2008)) while carrying a firearm (720 ILCS 5/18-2(a)(2) (West 2008)). The State presented the accomplice testimony of Cannon and Baines. Their testimony

was substantively similar in that each testified regarding the clothing worn by the parties; the general area where the offense occurred, Angelina's; the proximity of Angelina's to the apartment complex; and defendant's inculpatory statement that they had "hit a lick." Although defendant challenges the credibility of Cannon and Baines, the trial court expressly found them both credible witnesses during its May 6, 2010, ruling on defendant's posttrial motion. A reviewing court may view the testimony of an accomplice with suspicion and scrutinize it carefully; however, merely because a witness is an accomplice or may receive some form of lenient treatment does not destroy the accomplice's credibility, but rather affects the weight to be given the testimony. *People v. Winfield*, 113 Ill. App. 3d 818, 828 (1983). This was a matter for the trier of fact. See *id.* Moreover, their testimony was corroborated by the victims, Hussain and Panchal. They both testified regarding the similar attire worn by defendant and Findlay, hooded sweatshirts; the location of the robbery; and the items that were taken in the robbery, including a gold chain, a wallet, cash, keys, and a plastic bag. Although the victims were not able to identify defendant, Cannon and Baines did identify defendant, and the trial court credited their testimony.

¶ 27 Moreover, despite no one observing defendant in possession of a weapon, the State was not required to prove actual physical possession. The elements of armed robbery may be proved by circumstantial evidence. *People v. Wiley*, 165 Ill. 2d 259, 297 (1995). We also reject defendant's argument that he could not have been found guilty of armed robbery because the weapons allegedly used were not proved to be operable or otherwise dangerous. In *People v. Hill*, 346 Ill. App. 3d 545 (2004), the defendant was charged and convicted of attempt armed robbery. On appeal, he argued that the weapon he was carrying could not be considered a dangerous weapon or a firearm for purposes of section 18-2(a) because it was inoperable and therefore did not qualify as a firearm

within the meaning as provided in section 1.1 of the Firearm Owners Identification Card Act (the FOID Act). In reviewing and rejecting the defendant's argument, the *Hill* court noted that the 2000 amendment to the armed robbery statute deleted the requirement of proof of a dangerous weapon when a defendant is armed with a firearm under subsection (a)(2). The court rejected the defendant's argument for a number of reasons, among them that, even if the firearm was inoperable, the evidence was sufficient to prove that the firearm could have been used as a dangerous weapon and that the firearm would qualify as a firearm under the definition as provided in section 1.1 of the FOID Act. With respect to the definition of a firearm under the FOID Act, the Hill court found:

“[T]he focus is on the intended purpose of the firearm based upon its design, not the current status of its ability to be used as intended. As such, the evidence here, which indicated that defendant was armed with a ‘nickel-plated automatic’ handgun, was sufficient to qualify as a ‘firearm’ within the meaning of section 1.1 of the FOID Act.” *Hill*, 346 Ill. App. 3d at 549.

¶ 28 As in *Hill*, the State's evidence in the present case was sufficient to prove beyond a reasonable doubt that defendant possessed a firearm during the commission of the robbery. This was established by the testimony of the victims Hussain and Panchal, who testified that the individuals who robbed them brandished a firearm. Townsend testified that he searched the area near the vehicle Cannon was driving and discovered a pistol. Coronado testified that, on the following day, he was dispatched again to the area of the robbery, where he recovered a silver revolver in the grass. Cannon identified a firearm that he had observed defendant carrying. The trier of fact is in the best position to determine the credibility of the witnesses, to resolve any inconsistencies or conflicts in their testimony, to assess the proper weight to be given to their testimony and to draw reasonable

inferences from all of the evidence. *People v. Cochran*, 323 Ill. App. 3d 669, 679 (2001). The foregoing evidence, coupled with the State's evidence of defendant's flight from the scene and the false name he provided to Ortinau, was sufficient to establish that defendant possessed a firearm during the commission of the robbery beyond a reasonable doubt.

¶ 29 Defendant next contends that the State failed to establish his guilt beyond a reasonable doubt under a theory of accountability. The trial court found that defendant was legally accountable for the actions of the other perpetrators under section 5-2(c) of the Criminal Code of 1961 (the Code) (720 ILCS 5/5-2 (c) (West 2008)). In support of this contention, defendant asserts that he did not maintain a close association with any of the other alleged offenders after the robbery; there was no testimony presented regarding the events leading up to or planning the robbery; and there was no testimony regarding conversations after the robbery or how the proceeds should be shared.

¶ 30 A defendant is legally accountable for the conduct of another person when “[e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense.” 720 ILCS 5/5-2(c) (West 2010). Factors that may be considered in establishing accountability include: (1) presence at the scene without disapproval; (2) flight from the scene; (3) failure to report the crime; (4) close affiliation with the codefendant afterward; (5) sharing the proceeds of the criminal act; and (6) destroying or disposing of evidence. *People v. Taylor*, 164 Ill. 2d 131 (1995).

¶ 31 Contrary to defendant's assertions, defendant meets all of the six *Taylor* factors: (1) he was present at the scene and participated in the robbery; (2) he fled from the scene; (3) he failed to report the crime; (4) he was in close affiliation with the other perpetrators, Findlay, Smiley, Cannon, and

Baines, afterward; (5) he shared in the proceeds of the robbery; and (6) he disposed of evidence. The individuals who robbed Hussain and Panchal actively participated in the robbery. The victims were held at gunpoint, and their property was taken and put in a plastic bag. Defendant and Findlay ran back to the vehicle and defendant exclaimed his involvement in the robbery in that they had “just hit a lick.” Ortinau came upon defendant with Cannon, Baines, and Findlay in a vehicle, before defendant fled. The victims’ property was found in the plastic bag that was later recovered. Whether defendant was carrying a firearm, he is accountable for the conduct of the individual or individuals who did. We conclude the State’s evidence was sufficient for the trial court to find beyond a reasonable doubt that defendant was accountable for the conduct of the others in carrying a firearm.

¶ 32 Defendant next contends that the trial court erred when it imposed the 15-year enhancement to his sentence because of the State’s failure to establish that he possessed a firearm during the commission of the robbery. We have already determined that the State’s evidence was sufficient to establish that defendant possessed a firearm during the commission of the armed robbery. Therefore, we need not address this issue. See *People v. Blair*, 2013 IL 114122 (finding that the 15-year enhancement in the armed robbery statute was constitutional and properly applied).

¶ 33 Last, defendant contends that his sentence is excessive because of the improper disparity between his sentence and those of Baines and Cannon. Defendant argues that the disparity between his 25-year sentence and the misdemeanor sentences of Baines and Cannon is “outrageous” and should not be supported by Baines and Cannon being willing to testify.

¶ 34 In considering whether a defendant’s sentence is excessive, we note that we may not disturb a sentence within the applicable range unless the trial court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). Defendant’s sentence was within the range of sentencing a trial court

is authorized to impose. See 720 ILCS 5/18-2(b) (West 2008) (stating that a violation of subsection (a)(2) is a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court). A sentence is an abuse of discretion only if it is at great variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Stacey*, 193 Ill. 2d at 210.

¶ 35 Similarly situated defendants should not receive grossly disparate sentences; however, the disparity in sentences for the same offenses is not by itself a violation of fundamental fairness. *People v. Caballero*, 179 Ill. 2d 205, 216 (1997). Before determining whether defendant's 25-year sentence is grossly disparate to the sentences that Cannon and Baines received, we must first decide whether defendant and Cannon and Baines are similarly situated, because, if they are not similarly situated, defendant's claim must fail. See *People v. Stroup*, 397 Ill. App. 3d 271, 273-75 (2010); *People v. Eubanks*, 283 Ill. App. 3d 12, 25 (1996).

¶ 36 Considering whether defendant and Cannon and Baines are similarly situated begins by examining the offenses for which the men were sentenced. Defendant was sentenced for the offense of armed robbery with a firearm. Cannon and Baines pleaded guilty to and were sentenced for the offense of misdemeanor theft. Because defendant's offense for which he was sentenced is different from those offenses of Cannon and Baines, defendant and Cannon and Baines are not similarly situated. Therefore, defendant's claim fails. See *Eubanks*, 283 Ill. App. 3d at 25.

¶ 37 For the foregoing reasons, we affirm the judgment of the circuit court of Kane County.

¶ 38 Affirmed.