

2014 IL App (2d) 120650-U
No. 2-12-0650
Order filed June 26, 2014

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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 Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-3103
)	
MIGUEL A. RICO,)	Honorable
)	Fred L. Foreman,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Justices Hutchinson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court properly denied defendant's motion to quash and suppress, as the police had probable cause to arrest him either for criminal trespass to the real property where the proceeds of a home invasion were reportedly stored or, alternatively, for the home invasion itself; (2) the trial court did not abuse its discretion in sentencing defendant to maximum 30-year prison terms for home invasion and attendant offenses: the court was entitled to consider the offenses together, and, despite defendant's youth (which the court presumably considered), the maximums were justified by the seriousness of the offenses and defendant's history of delinquency, including violence.

¶ 2 Following a jury trial, defendant, Miguel A. Rico, was convicted of armed violence (720 ILCS 5/33A-2(a) (West 2010)), home invasion (720 ILCS 5/12-11(a)(2) (West 2010)), armed

robbery (720 ILCS 5/18-2(a)(1) (West 2010)), and three counts of aggravated kidnapping (720 ILCS 5/10-1(a)(1) (West 2010)). The trial court sentenced him to a 30-year prison term for each conviction, with the terms to be served concurrently. Defendant appeals, contending that (1) the police lacked probable cause to arrest him; and (2) his 30-year sentences are excessive. We affirm.

¶ 3 On September 8, 2010, around 5 a.m., William Chappel left his Antioch home for a walk. When he returned, he went to the kitchen for a cup of coffee. As he reached for the coffee pot, he felt an arm around his chest and a knife at his throat. Chappel described the offender as Hispanic, 5 feet 8 inches or 5 feet 9 inches tall, of medium build, and wearing an orange and black checked hoodie, dark cargo pants, and black tennis shoes. The offender took Chappel's car keys and locked him in the trunk of his car. Later, he put Chappel's stepdaughter, Caylen, in the trunk of Chappel's other car. When his trunk lid was opened again, Chappel saw the offender with Chappel's wife, Diane Staples, who was bleeding, apparently having been stabbed.

¶ 4 Defendant was charged with numerous offenses based on this incident. He filed motions to suppress his confession and to quash his arrest and suppress evidence. At a combined hearing, Lake County sheriff's detective James Yanecek testified as follows.

¶ 5 Yanecek and his partner, Detective Dever, received information that a vehicle stolen in the Antioch home invasion the previous day had been seen at 1320 North Park in Round Lake Beach. The suspect was described as a Hispanic man, 5 feet 5 inches to 5 feet 6 inches tall, wearing an orange plaid hoodie and baggy blue pants. They also learned that there was "possible property in the garage."

¶ 6 Later, the same vehicle was seen parked a few blocks from 1320 North Park. Yanecek and Dever were in the area, so they set up surveillance in a driveway across the street. Yanecek

said that he had been at that property previously on an unrelated incident. The front of the house was posted with a no-trespassing sign.

¶ 7 At about 11 p.m., they saw a man walking on the east side of a nearby park. When he got about 15 feet from the police vehicle, he quickly crossed the street and started walking up the driveway of 1320 North Park. He walked more than halfway up the driveway, past the home's entrance and past the no-trespassing sign. When the man continued toward the garage, Yanecek started his car and turned on the headlights. The man stopped and turned around. In the headlights, he appeared "very similar" to the description of the suspect in the Antioch home invasion. In particular, they recognized his clothing as matching the description of that worn by the home-invasion suspect. The man, defendant, was then arrested.

¶ 8 The trial court denied the motion to quash and suppress, finding that the officers had a "reasonable suspicion based on articulable facts" to approach defendant and ultimately take him into custody. Following a trial, the jury found defendant guilty of armed violence, home invasion, armed robbery, and three counts of aggravated kidnapping. The trial court sentenced him to concurrent 30-year terms on all of the convictions. Defendant timely appeals.

¶ 9 Defendant first contends that the detectives lacked probable cause to arrest him for criminal trespass to the real property at 1320 North Park. See 720 ILCS 5/21-3(a) (West 2010). He asserts that the State offered no evidence about the ownership of the property and thus failed to negate the possibility that defendant was the owner or someone acting with the owner's permission.

¶ 10 Initially, we note that the basis for the trial court's ruling is not clear. The court, after recounting evidence, including that defendant walked up the driveway past the no-trespassing sign, that he resembled the suspect in the home invasion, and that a vehicle stolen in the home

invasion was seen in the general vicinity, ruled that the officers had “reasonable suspicion based on articulable facts to approach this defendant.” The court ultimately ruled that the officers were justified in taking defendant into custody. Thus, it is unclear whether the court ruled that the officers were justified in arresting defendant for trespassing or had a reasonable suspicion that he was involved in the Antioch home invasion, a suspicion that ripened into probable cause as they approached him. The distinction is not critical because, regardless of which theory we consider, defendant’s arrest was proper.

¶ 11 Defendant correctly argues that a warrantless arrest must be justified by probable cause, rather than the less stringent reasonable-suspicion test that applies to investigatory stops (see *People v. Marcella*, 2013 IL App (2d) 120585, ¶ 26 (citing *Terry v. Ohio*, 392 U.S. 1 (1968))), and he argues that the facts the officers knew did not give them probable cause to believe that defendant was trespassing. The State argues that the officers’ knowledge did provide probable cause to arrest defendant for trespassing or, alternatively, gave them a reasonable suspicion that defendant was involved in the home invasion. Upon approaching defendant, they immediately recognized him as the suspect and at that point, according to the State, had probable cause to arrest him for the home invasion.

¶ 12 “Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime.” *People v. Love*, 199 Ill. 2d 269, 279 (2002). “[T]he existence of probable cause depends upon the totality of the circumstances at the time of the arrest.” *Id.* “In dealing with probable cause, *** we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” *Brinegar v. United States*, 338 U.S. 160, 175 (1949).

¶ 13 According to Yanecek, the officers had the following information. A car stolen in the home invasion the day before had been seen in front of the unoccupied home at 1320 North Park. (Although the testimony that the home was unoccupied was not given until trial, we may nonetheless consider it in assessing the court's ruling on the pretrial motion. See *People v. Kidd*, 175 Ill. 2d 1, 25 (1996)). Other property stolen in that incident was reportedly stored in the garage. Later that night, the same car was seen parked a few blocks away. Defendant, who matched the general description of the home-invasion suspect as a short Hispanic man, approached the house on foot. He quickly crossed the street when he saw the officers' car and proceeded up the driveway. He walked past the no-trespassing sign, past the entrance to the house, and continued toward the garage.

¶ 14 These facts gave the officers probable cause to believe that defendant was trespassing rather than approaching the house for some legitimate purpose. On the whole, it was likely that someone who knew about the home invasion had returned to retrieve some of the stolen property. Conversely, it was unlikely that the owner of the unoccupied house, or someone legitimately there with his permission, would approach it on foot at 11 p.m. and proceed immediately toward the garage.

¶ 15 We note parenthetically that defendant does not suggest that any of the information on which the officers relied was untrustworthy, or that any of Yanecek's testimony was inadmissible. Thus, he has forfeited any arguments on these issues.

¶ 16 Alternatively, these facts gave the officers at least a reasonable suspicion that the person approaching the house was somehow involved in the home invasion. Yanecek testified that as they approached defendant, who was visible in their headlights, they recognized him as more closely resembling the home-invasion suspect. In particular, they recognized his unique orange

hoodie and baggy blue pants. Thus, the reasonable suspicion immediately ripened into probable cause to arrest defendant for home invasion. See *People v. Cardenas*, 209 Ill. App. 3d 217, 223 (1991) (officer had probable cause to arrest defendant where, *inter alia*, his physical appearance and clothing matched description of suspect).

¶ 17 Defendant next contends that his sentences were an abuse of discretion. Defendant was convicted of six Class X offenses, and the trial court imposed the maximum 30-year sentence for each offense. See 730 ILCS 5/5-4.5-25(a) (West 2010).

¶ 18 Imposing an appropriate sentence is within the trial court's discretion, and we will not disturb its decision absent an abuse of that discretion. *People v. Bilski*, 333 Ill. App. 3d 808, 819 (2002). "A trial court has wide latitude in sentencing a defendant, so long as it neither ignores relevant mitigating factors nor considers improper factors in aggravation." *Id.* A trial court is in the best position to take into account such factors as " 'the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age' [citation][,] whereas the appellate court has to rely entirely on the record." *People v. Streit*, 142 Ill. 2d 13, 19 (1991) (quoting *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977)). Accordingly, we must not substitute our judgment for that of the trial court merely because we might have weighed the aggravating and mitigating factors differently. *Id.*

¶ 19 Defendant first argues that the court erred by considering all of the offenses together and imposing the maximum sentence for each. As defendant acknowledges, the offenses of which he was convicted were very serious. He held an entire family hostage in their home at knifepoint, locked Chappel and his young stepdaughter in car trunks, stabbed Staples, and stole a car and other items from the family. Yet defendant takes issue with the trial court for referring to the incident as "nightmarish" and a "horrible experience" for the victims. Defendant insists that,

while the court's characterization of "the *totality* of events might have been accurate, that characterization as to *each* of the offenses was not. By describing the incident as 'the stuff of nightmares' and a 'horrible experience,' and then imposing maximum sentences on *every* count, Judge Foreman failed to consider the specific offenses separately." (Emphasis in original.) Defendant, however, fails to specify which of the offenses he committed were not nightmarish for the victims, or which were deserving of lesser sentences because they were less nightmarish than others.

¶ 20 Moreover, defendant cites no authority for the contention that the trial court had to consider each offense in isolation when sentencing him. It is well settled that evidence of other crimes is admissible at sentencing regardless of whether the defendant was charged with or convicted of those crimes. *People v. Ward*, 154 Ill. 2d 272, 334 (1992). It would be odd indeed if the trial court could consider unrelated, uncharged conduct in imposing a sentence, but could not consider other offenses that were part of the same course of conduct.

¶ 21 *People v. Morgan*, 112 Ill. 2d 111 (1986), which defendant cites, is distinguishable. There, the defendant was convicted of murder and other offenses. The trial court imposed extended-term sentences on each conviction. The supreme court vacated the convictions for the lesser offenses, finding that the brutal and heinous behavior to which the trial court referred accompanied the murder, but not the other offenses. No similar situation exists here and the trial court properly considered the various offenses together.

¶ 22 Defendant further argues that the trial court failed to consider various mitigating factors, particularly his age (he was just short of 19 when he committed the offenses at issue). As noted, the trial court is in the best position to take into account factors such as a defendant's age, and we may not alter the sentence merely because we might have balanced those factors differently.

Streit, 142 Ill. 2d at 19. Further, when mitigating evidence was before the trial court, the court is presumed to have considered it. *People v. Dominguez*, 255 Ill. App. 3d 995, 1004 (1994). A defendant must point to something beyond the sentence itself to establish that such evidence was not considered. *Id.* Here, defendant points to nothing other than the sentences imposed to support his argument that the trial court did not consider mitigating factors.

¶ 23 Defendant's youth, while a mitigating factor, was outweighed by significant aggravating factors, particularly the seriousness of the offenses themselves. See *People v. Lindsay*, 247 Ill. App. 3d 518, 535 (1993) (trial court is not required to place greater weight on the defendant's potential for rehabilitation than on the seriousness of the offense). This was a premeditated crime, not merely an instance of youthful folly

¶ 24 As an example of a particular sentence defendant considers excessive, he points to the 30-year sentence for cutting Staples with a knife. He argues that the cuts were "the result of a struggle over the knife, rather than the defendant's deliberate action intended to cause harm." However, the relevant aggravating factor is that the defendant's action caused *or threatened* harm. 730 ILCS 5/5-5-3.2(a) (West 2010). The fact remains that, had defendant not broken into Staples's home and threatened her with a knife, she would not have been injured. The trial court could reasonably find that the fact that Staples's injuries occurred as a result of her attempt to resist defendant's assault rather than his deliberate attempt to injure her was not mitigating.

¶ 25 Moreover, despite defendant's young age, he already had a lengthy juvenile record, including several instances of violent behavior. He was on juvenile parole for home invasion and armed robbery when he committed the offenses at issue. As defendant concedes, the offenses he committed were extremely serious. The seriousness of the crime is the most important factor in sentencing. *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). Given the

seriousness of the offenses as discussed above and defendant's lengthy juvenile record, including a history of violence, the trial court did not err in imposing the maximum sentences.

¶ 26 The judgment of the circuit court of Lake County is affirmed.

¶ 27 Affirmed.