

No. 1-13-1762

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	11 CR 2308
	)	
WALTER THOMPSON,	)	
	)	Honorable Frank G. Zelezinski,
Defendant-Appellant.	)	Judge Presiding

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PRESIDING JUSTICE SIMON delivered the judgment of the court.  
Justices Neville and Liu concurred in the judgment.

**ORDER**

*Held:* The State's closing argument did not violate defendant's right to a fair and impartial trial where comments made by prosecutor were not a material factor in defendant's conviction and the trial court properly sustained defense counsel's objections and instructed the jury to consider only the evidence presented at trial. Defendant did not suffer ineffective assistance of counsel where defense counsel's agreement to stipulate to defendant's prior convictions was proper trial strategy and counsel attempted to prove up impeachment of testifying police officer. Sufficient evidence was presented at trial to support the jury's finding of guilt beyond a reasonable doubt. Defendant's sentence of 18 years' imprisonment for armed habitual criminal did not constitute abuse of discretion where trial court acknowledged the aggravating and mitigating factors before imposing the sentence, which fell squarely within the sentencing range for the crime.

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¶ 1 Following a jury trial, defendant Walter Thompson was found guilty of one count of armed habitual criminal (720 ILCS 5/24-1.7(a) (West 2010)) and sentenced to 18 years' imprisonment. On appeal, defendant contends that: he was denied a fair trial by numerous instances of prosecutorial misconduct during closing arguments; he suffered ineffective assistance of counsel; the evidence presented was not sufficient to prove his guilt beyond a reasonable doubt; and the 18-year sentence imposed by the trial court was excessive. For the following reasons, we affirm the judgment of the circuit court.

¶ 2 I. BACKGROUND

¶ 3 Defendant was charged with one count of armed habitual criminal along with seven other counts related to a residential burglary on January 13, 2011. At trial, the State proceeded on the single count of armed habitual criminal. The State presented the testimony of Detective Coleman of the Dolton police department. Coleman testified that he was on patrol in uniform and driving a marked squad car at approximately 3:10 p.m. on January 13, 2011, when he received a dispatch about a residential burglary at 15109 South Grant Street in Dolton, Illinois (the "residence"). At that time, Coleman and Officer Herrera, who was also in uniform and in a separate marked squad car, responded to the dispatch call.

¶ 4 Coleman testified that he exited his vehicle and inspected the residence when he found a breach in the doorway. Specifically, Coleman identified damage to a storm door and the frame of the entry door to the house. Coleman and Herrera entered the residence and began a search to see if there was an offender in the house. Coleman started to search in the downstairs of the residence and Herrera searching the second floor. Shortly after he went upstairs, Herrera alerted Coleman by saying there was an offender in the house.

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¶ 5 Coleman ran up the stairs and saw Herrera and a man, whom Coleman identified as defendant, fighting. Defendant had long dreadlocks and was wearing a dark color jacket and dark colored pants. When Coleman entered the room to assist Herrera, defendant disengaged with Herrera by pushing him back. Coleman testified that defendant then dove head first out of the window.

¶ 6 Coleman testified that he ran downstairs and out of the residence and into his squad car to relocate and pursue the offender. Coleman headed in a northeasterly direction because he saw defendant run northeast through the yard. Coleman testified that Herrera attempted to climb out the window, but was unable to because of all the equipment he was wearing. Coleman pursued defendant in his squad car and testified that at this time he was in radio communication with his fellow officers and that there was a radio transmission as to which direction defendant was running.

¶ 7 Coleman testified that defendant was apprehended by Detective Hope and Officer Hampton a couple blocks from the residence. When Coleman arrived, Hampton had defendant on the ground and Coleman exited his car and placed handcuffs on defendant. Coleman patted defendant down to make sure that he did not have a weapon and then put defendant in his squad car. Coleman testified that he then drove to a residence two houses down from where the burglary occurred and retrieved a semiautomatic handgun that defendant had thrown in the yard. Coleman picked up the handgun and removed the magazine and bullets and placed them in the trunk of his squad car.

¶ 8 On cross-examination, Coleman was questioned about his written report of the incident. Coleman admitted that he did not put in his arrest report that defendant and Herrera had a

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physical altercation. Coleman testified that he originally reported to dispatch that both sides of the residence were secured before he located the damage to the door. Coleman admitted that he never saw defendant with the weapon or throw the weapon, but that another officer witnessed defendant throw the weapon in the yard.

¶ 9 Detective Hope testified that he was driving an unmarked vehicle in the area when he responded to the call at 15109 South Grant Street. Hope pulled into the alley behind the residence and, within a minute, he saw a young man run through the back gate of the residence and directly by Hope's vehicle. Hope described the man as approximately 5' 9" tall with long dreadlocks and wearing dark clothing, possibly with a stripe on the shirt. Hope identified defendant as the man he saw run by his car.

¶ 10 Hope testified that after defendant ran by his vehicle and in an eastward direction, Hope radioed dispatch with defendant's location and direction. Hope pursued defendant eastbound before losing sight of him for a few seconds. Hope testified that he next saw defendant exit a gangway and Hope exited his vehicle, drew his weapon, and ordered defendant to stop. Officer Hampton arrived and assisted Hope in putting defendant on the ground.

¶ 11 Hope testified that Coleman was next to arrive and that defendant was placed in handcuffs. Hope testified that he remained with defendant while Coleman and Hampton returned to 15104 South Oak Street to investigate the backyard where Hampton saw defendant discard the weapon. When Coleman and Hampton returned to Hope and defendant, the officers showed Hope that they had found a handgun in the yard. On cross-examination, Hope testified that he did not inform the dispatcher when he first saw defendant that defendant had dreadlocks. In addition,

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when he was arrested, Hope noted that he saw that defendant did not have a stripe on his coat or shirt.

¶ 12 During cross-examination, defense counsel attempted to impeach Hope through the transcript of the conversation he had with the dispatcher. Hope relayed defendant's description and location and the dispatcher responded "got a male black with a black hat on, striped shirt going westbound on Evers," and Hope responding "10-4." However, the court sustained the State's objection that it was impermissible hearsay and not proper for impeachment.

¶ 13 Hampton testified that he also responded to the dispatch call. When he reached the area Hampton saw defendant in all black clothing, running east on 151st Street. Hampton then chased defendant on foot. Hampton testified that during the chase, he saw defendant reach toward the side of his waistband, pull out a handgun, and toss the handgun into a backyard. Hampton continued to chase defendant until they approached Detective Hope. Hampton testified that he saw Hope draw his weapon and order defendant to stop.

¶ 14 Hampton then grabbed defendant and brought him to the ground. Hampton testified that defendant was breathing heavily and sweating from both sides of his head. After Coleman arrived, defendant was placed in handcuffs. Hampton and Coleman then returned to the location where Hampton saw defendant throw the handgun and found and retrieved the weapon.

¶ 15 Frank Senese from the Illinois State Police Joliet Forensic Science Lab testified that he examined the firearm, bullets, and magazine recovered in this case for latent fingerprints. Senese was able to find one latent fingerprint on a bullet, but that print did not match defendant's fingerprints. Senese testified that fingerprints are not always left on items and in cases, such as the instant matter, where an item is tossed to the ground; impressions may be wiped off, blurred,

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or washed out. The parties stipulated that defendant had been convicted of two or more prior felonies for the purpose of proving the elements of the offense of armed habitual criminal. The State rested and defendant presented his defense.

¶ 16 Detective Coleman was recalled by defendant to testify. Coleman testified that he examined the exterior of the residence when he arrived, explaining that he arrived at the front of the house, then went along the side of the house, and in the backyard and garage in the rear of the property. Coleman testified that there was a pit bull in the rear yard. Coleman further testified that he was face-to-face with defendant in the residence before defendant fled. He admitted that he did not see a gun on defendant's person at any time.

¶ 17 Defendant testified on his own behalf that he was 39 years-old at the time of trial and resided in Chicago, Illinois, with his girlfriend. Defendant stated that at approximately 3:15 p.m. on January 13, 2011, he had been standing in the street near the corner of 151st Street and South Oak Street in Dolton, Illinois, for about 10 minutes waiting for his friend "JB" to pick him up. Defendant was wearing a black motorcycle jacket, blue jeans, and a black, v-neck t-shirt. Defendant explained that his friend JB had driven him to Dolton so that defendant could visit his friend Latisha Coleman. Latisha lived at 15045 South Oak Street, which was near the intersection where defendant was standing when he was apprehended by police officers.

¶ 18 Defendant saw a "young guy" run out of a gangway and then by him and head east on 151st Street. Defendant described the young guy as a black male wearing a skull cap, striped shirt, and khaki pants. Defendant testified that about 90 to 120 seconds later two police cars and a police officer on foot arrived at the intersection, approached defendant, apprehended him,

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slammed him to the ground, and arrested him. Defendant testified that he did not have a gun in his possession.

¶ 19 The parties rested, closing arguments were presented to the jury, and the trial court instructed the jury. Following deliberations, the jury found defendant guilty of armed habitual criminal. Defendant filed a motion for new trial, which was denied, and the trial court sentenced defendant to 18 years' imprisonment. Defendant subsequently filed a supplemental motion for new trial and a motion to reconsider sentence. On appeal, defendant argues that: (1) he was denied a fair and impartial trial due to prosecutorial misconduct during closing arguments; (2) he suffered ineffective assistance of counsel; (3) the evidence presented was not sufficient to prove his guilt beyond a reasonable doubt; and (4) the trial court erred in sentencing defendant.<sup>1</sup>

¶ 20

## II. ANALYSIS

¶ 21

### A. Prosecutorial Misconduct

¶ 22 Defendant first argues that his right to a fair and impartial trial was violated by prosecutorial misconduct. Defendant asserts that the prosecutor's references to defendant doing things "like a twice convicted felon" and the fact that defendant had "two or more felony convictions" were highly prejudicial and denied defendant a fair trial. Defendant also maintains that the State improperly referenced defendant's failure to call witnesses, namely his friends JB and Latisha Coleman, to support his claim that he was not at the residence. In addition, defendant argues that the State improperly commented on defendant's post-arrest silence, impugned the integrity of defense counsel and labeled defense counsel's closing arguments as an insulting "spiel." Defendant asserts that individually, or cumulatively, these errors violated his right to a

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<sup>1</sup> We note that we are without the benefit of a reply brief from defendant in this case.

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fair and impartial trial.

¶ 23 It is well-settled that prosecutors enjoy wide latitude in closing arguments and that the scope of permissible argument rests within the sound discretion of the trial court. The standard of review of the court's determination of the propriety of the argument is a divided question with some courts applying the abuse of discretion standard and others applying a *de novo* standard of review. *People v. Thompson*, 2013 IL App (1st) 113105, ¶¶ 75-77 (2013). However, as in *Thompson* and other recent cases, we do not need to resolve this issue as our holding would be the same under either standard. *Id.* at ¶ 78.

¶ 24 Any improper comments or remarks made by a prosecutor in closing argument are not reversible error unless they are a material factor in the conviction or cause substantial prejudice to the accused. *People v. Sutton*, 316 Ill. App. 3d 874, 893 (2000). In reviewing allegations of prosecutorial misconduct, the court must consider the arguments of both the prosecutor and the defense in their entirety and place the allegations of improper comments in context. *People v. Evans*, 209 Ill. 2d 194, 225-26 (2004). The prosecution has the right to comment on the evidence presented at trial and draw all reasonable inferences deducible therefrom. *People v. Simms*, 192 Ill. 2d 348, 396 (2000). The prosecution may also respond to comments made by defense counsel. *People v. Abadia*, 328 Ill. App. 3d 669, 678-79 (2001). Regulation of remarks by counsel is best left to the trial court's discretion, which may cure such errors by giving proper jury instructions on the law, informing the jury that counsel's arguments are not evidence and are to be disregarded if not supported by the evidence at trial, or by granting an objection and admonishing the jury to disregard comments. *Simms*, 192 Ill. 2d at 396.

¶ 25 The State first correctly notes that defendant properly objected at trial and raised the



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claims in his posttrial motion concerning the prosecutor's referencing the alibi witnesses and the characterization of defense counsel's closing as a "spiel." However, although defendant did mention the claim that the prosecutor improperly mentioned his criminal record in his posttrial brief, defendant failed to acknowledge that he did not object to the State's comments during closing argument about defendant's "two or more convictions" and only once objected to the use of "twice convicted felon." Likewise, defendant failed to assert his claim about the prosecution's discussion of defendant's post-arrest silence in his posttrial motion. Accordingly, the second two issues have been forfeited and cannot be considered as plain error as that argument was not mentioned in defendant's appellant's brief. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010).

¶ 26 However, waiver is a limitation on the parties and not the reviewing court. *People v. Carter*, 213 Ill. 2d 295, 299 (2004). While defendant failed to properly object at trial and specifically mention each of the alleged instances of prosecutorial misconduct, several instances were properly preserved. Furthermore, defendant argues that the cumulative effect of all errors violated his right to a fair and impartial trial. Accordingly, waiver notwithstanding, in the interests of a just and complete result, we consider all of defendant's arguments.

¶ 27 *1. Arguing Defendant's Prior Convictions*

¶ 28 Defendant first contends that he was denied a fair and impartial trial because of the prosecutor's repeated reference to defendant as a "twice convicted felon," that he completed tasks like a twice convicted felon would, and that defendant had "two or more convictions." However, defendant's criminal history, ordinarily not allowed as evidence of guilt, is an element of the crime of armed habitual criminal. Defendant stipulated to the fact he had been convicted of two or more crimes, mirroring the language of the statute.

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¶ 29 Defendant argues that the logic of these cases should prevail and the prosecutor's repeated mentioning of his prior convictions violated his right to a fair trial. Other crimes evidence is admissible not only if it is an element of the crime, but if it is relevant for any purpose other than to show a propensity to commit crime, which includes *modus operandi*, intent, motive, identity, or absence of mistake. *People v. Pikes*, 2013 IL 115171 ¶11. Defendant is correct that, even if relevant, the evidence should not be admitted or discussed if its probative value is substantially outweighed by its prejudicial effect.

¶ 30 In the instant matter, defendant's criminal history was not used as evidence of guilt and the prosecutor's comments did not reach that impermissible point. The cases cited by defendant are distinguishable. In *People v. Williams*, 289 Ill. App. 3d 24 (1997), the prosecutor disregarded the limited purpose of the admission of the defendant's prior conviction for the limited purpose of impeachment purposes and utilized the testimony to argue the defendant's guilt. In *People v. Harris*, 343 Ill. App. 3d 1014 (2013), the issue was not the prosecutor's comments on the defendant's criminal history, but whether the court erred in refusing to accept the defendant's stipulation to a prior conviction.

¶ 31 Defendant's convictions were stipulated to in this case and the State was open to argue that information during closing. The prosecutor's repeated reference to this evidence was perhaps overzealous, but did not constitute prejudice such that reversal is required. Any prejudice resulting in the case was cured as the jury was properly instructed by the court to consider only the evidence in the case and determine if the State had met its burden of proof. Furthermore, the evidence in this case was not closely balanced and any prejudice from the State's argument would be deemed harmless.

¶ 32

*2. Failure to Call Witnesses*

¶ 33 Defendant argues that the State commented on defendant's failure to present JB or Latisha Coleman as alibi witnesses. Defendant testified under cross-examination that JB had driven him to Latisha's house on the day of the incident that he visited with Latisha, and then was waiting on the street for JB to pick him up. Neither JB nor Latisha testified to support defendant's alibi and account for his presence during the police investigation of the residence and ensuing chase.

¶ 34 During the State's closing rebuttal argument, the State argued, "We got Walter Thompson telling us, he is on the street. This is the middle of January. He is visiting a lady friend, Latisha. Counsel chose to put on a defense. Where is Latisha?" Defense counsel objected and the trial court sustained the objection. However, the prosecutor continued, "And JB, this other person that dropped him off –." Defense counsel interjected with another objection, which the trial court sustained and ordered the prosecutor to "Move along."

¶ 35 Defendant argues that the prejudice suffered by this argument is highlighted by a note sent out by the jury during deliberations that asked, "Why didn't Defense call any witnesses: Latesha, JB?" The trial court sent a return note stating "The defendant has no burden of proof and has no obligation to call any witnesses." However, despite the trial court's efforts by sending the note, sustaining defense counsel's objections and admonishing the jurors, defendant argues that the State's improper commentary resonated with the jury and improperly influenced their deliberations.

¶ 36 We agree with the State that the prosecutor's comments were not improper. Where a defendant injects the existence of alibi witnesses in his testimony but does not present those

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witnesses at trial, so long as it is not relied on as substantial proof of the charge, the absence of such witnesses is a permissible subject for argument. *People v. Blakes*, 63 Ill.2d 354, 359-60 (1976). In this case, the lack of witnesses was not relied on as substantial proof of the charge against defendant. Rather, the trial court sustained defense counsel's objections, cut off the State's commentary on this issue, and properly instructed the jury, thereby curing any possible resulting prejudice.

¶ 37

### 3. Defendant's Post-Arrest Silence

¶ 38 Defendant contends that during the prosecutor's cross-examination of defendant, the prosecutor improperly asked defendant if he told the police officers that he saw an individual run by him. Defense counsel objected to this question, but the trial court overruled the objection. Defendant argues that defense counsel agreed during a sidebar conference, just before the question was asked, that there would be no mention of *Miranda* or post-*Miranda* silence. Defendant contends that this was fundamentally unfair and a violation of due process to use his post-arrest silence to try and undermine his exculpatory testimony. *Doyle v. Ohio*, 426 U.S. 610, 618 (1976).

¶ 39 In *Doyle*, the defendant's silence after receiving *Miranda* warnings was utilized for impeachment purposes regarding the defendant's explanation of events at trial and the United States Supreme Court determined this was fundamentally unfair and a violation of due process. *Id.* at 618. The record in this case does not implicate *Doyle* or due process concerns on this issue. The prosecutor asked defendant if he asked the police why he was arrested. When he said they asked why he was standing on the corner, the prosecutor again questioned if he asked the police why he was arrested, defendant again said he did, but responded that the police did not say why

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he was arrested and said he would be freed if he knew anything about a burglary.

¶ 40 Moreover, the sidebar prior to the prosecutor's examination involved defense counsel's objection to the State's attempt to impeach defendant through statements he made during the booking process at the police station. During that sidebar, the prosecutor stated that he would not go into *Miranda*. Defendant argues that the prosecutor immediately delved into this impermissible area.

¶ 41 However, no reference to *Miranda* was made or of any interrogation. In fact, as the State points out, the record is silent regarding any interrogation of defendant, whether he received his *Miranda* warnings, or if he invoked his right to remain silent. The prosecutor did not inquire into the period where defendant was at the police station or any topic discussed in the sidebar. The record does not support defendant's claim that the prosecution improperly sought to utilize defendant's post-arrest silence against him.

¶ 42 *4. Impugning Defense Counsel's Integrity*

¶ 43 Defendant also argues that the State committed prosecutorial misconduct by commenting on defense counsel's closing argument. In rebuttal, the prosecutor responded to defense counsel's commentary that the jury need not believe the police "because [they] say it's so," especially because there was no substantive corroborating evidence presented to link defendant to the handgun. The State responded that it was "insulting for these four hard working Dolton police officers" and "It's also insulting to your intelligence ladies and gentlemen. That whole speech or spiel was insulting."

¶ 44 Defendant relies on *People v. Starks*, 116 Ill. App. 3d 384 (1983) and *People v. Wheeler*, 226 Ill. 2d 92, 131 (2007) in support for his argument that the prosecutor improperly disparaged

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defense counsel. However, both *Starks* and *Wheeler* involved egregious and repeated remarks by the prosecutor accusing defense counsel of lying and deceiving the jury to fabricate a defense with the chief purpose of inflaming the passions and prejudices of the jury. In the instant matter, counsel addressed, albeit strongly, defense counsel's intimation that the police officers might be lying.

¶ 45 When read in context, the prosecutor's comments merely responded to defense counsel's argument that the police may not have been truthful in their testimony. The prosecutor did not attack counsel or argue that defense counsel was lying or fabricating a defense. The prosecutor directed his comments to protecting the testifying officers and did not seek to only inflame the passion or prejudices of the jury in violation of defendant's right to a fair and impartial trial.

¶ 46 Finally, defendant's claim that these allegations of misconduct cumulatively denied his right to a fair and impartial trial is rejected. The evidence in this case was not so close and defendant did not suffer prejudicial error from the cumulative effect of any improper argument or comment. Moreover, the trial court properly sustained several objections and instructed the jury that counsels' closing arguments are only argument and the jury is charged with determining whether evidence submitted supported conviction. Accordingly, defendant's right to a fair and impartial trial was not violated.

¶ 47 B. Effective Assistance of Counsel

¶ 48 Defendant asserts that he suffered ineffective assistance of counsel for defense counsel's failure to prove up the impeachment of Detective Hope and for stipulating to language stating that defendant had "two or more" qualifying convictions. A claim of ineffective assistance of counsel is reviewed under the standard announced by the United States Supreme Court in

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*Strickland v. Washington*, 466 U.S. 668, 694 (1984). Under *Strickland*, to determine whether there has been a violation of the defendant's sixth amendment right to effective assistance of counsel, the defendant must show: (1) that his counsel's representation fell below an objective standard of reasonableness; and (2) that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 694; *People v. Shatner*, 174 Ill. 2d 133, 144 (1996). A strong presumption exists that counsel's conduct fell within the range of reasonable professional conduct. *Strickland*, 466 U.S. at 689. If the second prong cannot be satisfied, a reviewing court need not consider the first prong. *Strickland*, 466 U.S. at 697.

¶ 49 Defendant argues that if Detective Hope had been confronted with the conversation with the dispatcher, confirming the dispatcher's statement that the suspect had a hat and striped shirt on would have made a difference in a very close case. Defendant contends that this would have brought the identification of defendant by the police officers into question and tipped the scales in his favor. He adds that there was no possible defensible strategy for counsel to agree to the "or more" language in the stipulation and, without authority, that the jury should only be told about the minimum amount of convictions. Defendant cites generally to *People v. Furby*, 228 Ill. App. 3d 1 (1992), for the proposition that the decision to stipulate to two or more qualifying convictions cannot be considered trial strategy or the exercise of judgment by counsel.

¶ 50 We begin by noting that the *Furby* court did find that errors made by counsel rendered assistance ineffective and required a new trial. The court further stated that the errors made could not be considered matters of trial strategy; however, none of the errors involved a decision by counsel to stipulate to evidence. *Id.* at 11-12. As pointed out by the State, to the contrary, the

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decision to stipulate to a prior conviction as an element of an offense is absolutely a matter of trial strategy and since the decision to stipulate is the least prejudicial means of introducing that evidence, one that actually supports counsel's actions as effective. *People v. Allen*, 382 Ill. App. 3d 594, 599 (2008).

¶ 51 In addition, counsel did attempt to impeach Detective Hope during cross-examination and did attempt to prove up that impeachment during a sidebar with the trial court, but the court sustained the State's objection to counsel's impeachment attempt. Even assuming that counsel erred in this attempt to impeach Hope, the remainder of Hope's testimony remains and the corroborating testimony of the other officers who also identified defendant would not have been overcome if Hope had been impeached on this issue. Accordingly, defendant has not shown that counsel's representation fell below an objective standard of reasonableness and, further, based on the evidence at trial, defendant cannot show prejudice from any alleged error.

¶ 52 C. Sufficiency of the Evidence

¶ 53 The State is required to present proof beyond a reasonable doubt of every necessary fact to find a defendant guilty of a crime. *In re Winship*, 397 U.S. 358, 364 (1970). In assessing the sufficiency of the evidence to sustain a verdict on appeal we must view the evidence in the light most favorable to the prosecution to determine if *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Bush*, 214 Ill. 2d 318, 326 (2005), citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). This means that we must allow all reasonable inferences from the record in the favor of the prosecution. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). Furthermore, this court does not retry the defendant as resolution of the credibility of witnesses and conflicts in



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evidence are matters within the province of the trier of fact and we grant deference to those findings. *People v. Rendak*, 2011 IL App (1st) 082093 ¶ 28.

¶ 54 Defendant argues that the police officers that testified "did not create an abiding sense of guilt." Defendant points to the impeachment of Detectives Coleman and Hope on a number of important details, including Coleman's lack of detail in his arrest report and Hope's testimony that the man that ran past him may have had a stripe on his shirt. In addition, defendant asserts that there was no scientific evidence to support the testimony of the officers and the only fingerprint identified on the handgun and bullets recovered did not match defendant's fingerprints.

¶ 55 Defendant's conviction obviously rests squarely within the province of the trier of fact as they weighed the credibility of the witnesses' testimony at trial and resolved any discrepancies or conflicts in the evidence in favor of the State. While there was some impeachment of the officers' testimony by defense counsel, there was sufficient testimony to support the judgment against defendant. There was testimony that defendant fought with Officer Herrera and Detective Coleman saw defendant clearly before he fled the residence through the window. Detective Coleman testified that he saw defendant run by and saw his face.

¶ 56 Officer Hampton saw defendant reach to his waistband and discard a weapon before losing sight of defendant and then see him exit a gangway seconds later where Detective Hope stopped defendant. Detective Coleman and Officer Hampton then immediately retrieved the weapon from where Hampton saw defendant discard it. The jury determined that the officers were credible and gave their testimony more weight than defendant's testimony and we will not disturb their finding in this case.

¶ 57

D. Sentencing

¶ 58 Defendant contends that the trial court abused its discretion in sentencing him to 18 years' imprisonment. Generally, a reviewing court may only disturb a sentence that falls within the statutory range for the offense of which the defendant has been convicted if the trial court has abused its discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). The abuse of discretion standard applies in cases such as this because the trial court is in the best position to determine the circumstances of the case and weigh the credibility of the witnesses. *People v. Burdine*, 362 Ill. App. 3d 19, 26 (2005). Unless the sentence is grossly disproportionate to the nature of the offense committed, the sentence should be affirmed. *People v. Phillips*, 265 Ill. App. 3d 438, 449 (1994). Where the sentencing factors have been considered, it is within the trial court's discretion to determine what significance is given to each aggravating and mitigating factor. *People v. Saldivar*, 113 Ill. 2d 256, 272 (1986). However, the court may not consider a factor implicit in the offense as an aggravating factor. *Id.*

¶ 59 Defendant argues that the trial court abused its discretion in entering the sentence. He notes that the sentencing range for armed habitual criminal, a Class X felony, is 6 to 30 years' imprisonment. 730 ILCS 5/5-4.5-25(a) (West 2010). Defendant contends that the conviction already considers the prior offenses and the offenses for which his conviction was based were all "antiquated" as they were 17 and 21 years old. He adds that other convictions that defendant has on his record were also "antiquated" as they were from 1996. Based on this and his argument that the facts demonstrate that he was "not bent on harm" because he did not utilize or brandish his weapon show that the trial court was motivated by "vindictiveness" rather than a reasonable review of the sentencing factors.

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¶ 60 The trial court did not abuse its discretion in imposing defendant's sentence in this case. The trial court heard all arguments in aggravation and mitigation, reviewed the presentence investigation report, and looked at the nature of the offense. While, as defendant argues, he did not brandish his weapon or harm the police officers, he did engage in a physical altercation with an officer, fled the scene, and discarded a loaded weapon in a backyard in his attempt to evade the police.

¶ 61 Noting that defendant had "been part of the criminal justice system since 1985, and the matter just continues onwards," the trial court entered a sentence squarely in the middle of the sentencing range for armed habitual criminal. There is no evidence of "vindictiveness" in the record or cited by defendant other than the fact he did not receive the minimum sentence. Nor is there any evidence showing that the trial court did not consider any mitigation evidence. Accordingly, the trial court did not consider any improper factors or enter a grossly disproportionate sentence and we affirm the judgment of the trial court.

¶ 62 III. CONCLUSION

¶ 63 Accordingly, we affirm the judgment of the Circuit Court of Cook County.

¶ 64 Affirmed.