

SIXTH DIVISION
July 10, 2015

No. 1-13-2524

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 11 CR 11984
)	
RAYMOND HOLLAND,)	Honorable
)	Charles P. Burns,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

O R D E R

¶ 1 *Held:* We rejected defendant's argument that his 16-year prison sentence for aggravated battery with a firearm was excessive where the record established that the trial court thoroughly considered all appropriate factors, including mitigating factors.

¶ 2 Defendant, Raymond Holland, was charged by indictment with attempted first-degree murder and aggravated battery with a firearm stemming from an incident which occurred when he was 19-years old. Following a bench trial, defendant was found not-guilty of attempted first-degree murder, but guilty of aggravated battery with a firearm and was sentenced to 16 years' imprisonment. On appeal, defendant argues that his sentence constitutes an abuse of discretion

in view of the mitigating factors, including his lack of criminal history, and his rehabilitative potential. We affirm.

¶ 3 At trial, the parties stipulated that Maali Elsaeeh, manager of the Four Stars Liquor Store, would testify that there were several video surveillance cameras inside the liquor store and that the cameras were working properly and functioning on June 12, 2011. It was further stipulated that Mr. Elaseeh would testify that the surveillance video recording of the events on that date was fair and accurate and that he downloaded and tendered the surveillance video to the Chicago police department. Without objection, the surveillance video was admitted into evidence.

¶ 4 Vincent Noble testified that on June 12, 2011, at approximately 7 p.m., he and Kenya Murdock went to the Four Stars Liquor Store located at 82nd Street and Exchange Avenue in Chicago to get some change. Mr. Noble testified that neither he, nor Mr. Murdock, had a gun in their possession on that day. At that time, there were about 5 other people in the liquor store, but the men did not speak to anyone and left the store quickly.

¶ 5 As the two men prepared to cross Exchange Street, Mr. Noble noticed a man wearing a black hoodie, about 10 to 15 feet away, standing next to a woman. The man asked whether they were from the "Bs." The B's are a faction of the Vice Lords street gang. Mr. Noble turned around when he heard the man. Mr. Noble did not recognize the man and did not know what the man meant by the question. Before Mr. Noble or Mr. Murdock could answer, the man pointed a gun at them and fired it about four or five times. Mr. Noble ran away, but saw that Mr. Murdock had been hit and his head was bleeding. Mr. Noble went back to Mr. Murdock and told him to remain still until an ambulance arrived. When the police arrived on the scene, Mr. Noble left.

¶ 6 During his testimony, Mr. Noble was shown the liquor store surveillance video from June 12. Mr. Noble explained that he is depicted in the video pulling up his shirt because his pants were falling down and he was holding a cell phone because he was checking the time. Mr. Noble also testified that the individual seen in the video running from the area of the liquor store and toward the train tracks was the person who shot at him.

¶ 7 On cross-examination, Mr. Noble testified that he initially had left the liquor store without Mr. Murdock, but returned because he did not want to leave Mr. Murdock alone. Mr. Noble denied that, after walking out of the store, he stated: "What's up Lord?" Mr. Murdock admitted to speaking with a detective on the date in question regarding a tattoo of the name "Bingo" on his arm, but denied telling the detective that the name "Bingo" referred to the name of a former "3B" gang member who had been killed.

¶ 8 Kenya Murdock testified that he was with Mr. Noble on June 12, 2011, at the liquor store. Mr. Murdock stated that as he was leaving the liquor store, he heard "just bam-bam-bam," and he was shot. Mr. Murdock identified defendant as the person who shot him. He stated that Mr. Noble did not have a gun in his possession on that date.

¶ 9 Mr. Murdock explained that his speech is impaired because of a gunshot wound he sustained in the June 12 incident. Mr. Murdock showed the trial court a scar which ran from the front of his head around to the back of his left ear. Mr. Murdock further stated that, while he was in the hospital, detectives showed him a photo array, and that he identified defendant in a photograph as the shooter.

¶ 10 Lolita Hancock testified that on June 12, 2011, she and her sister Tracy went to the liquor store around 7 p.m. Tracy parked her vehicle on the side of the liquor store facing east toward

the tracks and went into the store while Ms. Hancock remained in the vehicle with the window open. As she waited for her sister to return, a man in a black hoodie and a female, who wore a jacket and had a ponytail, appeared on her right as they left the liquor store. They stopped about 10 to 15 feet away from her. The man reached into his pants, took out a gun, and fired three shots behind him toward 82nd Street and Exchange Avenue. Ms. Hancock ducked down until the gunshots stopped and then saw the man and woman fleeing toward the railroad tracks. Ms. Hancock ran into the store to see if her sister was okay. After learning that her sister was not hurt, Ms. Hancock went outside the liquor store. Mr. Murdock was lying there with "parts of his head in the street." Ms. Hancock stated that prior to the man firing his gun, she heard no other gunshots. On July 2, 2011, she went to Area 2 police station to view a lineup where she identified defendant as the shooter.

¶ 11 Officer Juan Aquirre, a forensic officer and evidence technician, testified that around 9:40 p.m., he was dispatched to the area of 8201 South Exchange Street to search for evidence. Officer Aquirre recovered two shell casings from a .380-caliber firearm on the sidewalk near the liquor store.

¶ 12 Detective Isaac Lambert testified that on July 2, 2011, at around 2 p.m., he met with Ms. Hancock at Area 2 police station. Ms. Hancock identified defendant in a lineup as the shooter. On July 2, 2011, Detective Lambert, his partner, and an Assistant State's Attorney, met Mr. Murdock at Northwestern University Rehabilitation Center where he was being treated for his gunshot wounds. Detective Lambert presented a photo array to Mr. Murdock who identified defendant as the shooter from his photograph.

¶ 13 After the trial court denied his motion for a directed finding, defendant testified.

¶ 14 In June 2011, defendant lived on 82nd Street and Coles Avenue in Chicago, was 19-years old, unemployed, and was not attending school. Defendant claimed that although he is not a gang member, he is forced to have relationships with gangs because of where he lives. Defendant stated that in 2009 and 2010, he had two confrontations with the Vice Lords and, thus, carried a concealed weapon—a .380-caliber semiautomatic. In June 2011, some "gang-banging" occurred between the Stones and the Kings street gangs from their territory on the east side of Exchange Street, and the Vice Lords and a faction of that gang, the Bs, from their territory on the west side of Exchange Street.

¶ 15 On June 12, 2011, defendant and his girlfriend were walking to the liquor store which is situated on the dividing line of gang territory. Defendant was carrying a gun because he was afraid for his safety. Two men were standing on 82nd Street and Escanaba Avenue, one block from Exchange Street. Defendant did not recognize them. When defendant went inside the liquor store, he observed on a monitor that two men were crossing the street toward the liquor store. Defendant told Ms. Lewis "to come on" and that he "didn't feel right" because the two men were approaching from territory controlled by the Vice Lords and the Bs.

¶ 16 The two men entered the liquor store and one approached the cash register and asked for change for a \$10 bill. When one of the men lifted his shirt, defendant saw a gun in the waistband of his pants. Later, the same man was on his cell phone calling or texting someone. Eventually, both men left the store, as did defendant and Ms. Lewis. As defendant and Ms. Lewis walked, they could hear voices behind them. Defendant turned to see the two men looking at them. The smaller of the two men said: "What's up Lord?" Defendant responded: "I am no Lord." Defendant saw the man reach for the same side of his waistband where defendant

had initially seen the gun. Defendant believed the man was going to shoot at him, so defendant pulled out his gun and fired it. Defendant did not actually see the man pull out his gun. Defendant and Ms. Lewis fled heading east. Defendant was running and shooting his gun as he ran, not aiming at anyone in particular. He did not intend to kill or hurt either of the men, but shot at them because he was afraid they were going to shoot him.

¶ 17 On cross-examination, defendant admitted to intentionally taking the gun out of his waistband. When he pointed the gun in the direction of the corner where the two men had been standing, he was not certain who actually was standing there. Defendant denied telling the police that he had sold the gun used in the shooting to a man named Mike.

¶ 18 In rebuttal, Chicago police detective, Devin Jones, testified that on July 2, 2011, at around 3:45 p.m., he was working at Area 2 with his partner Detective Lambert when defendant asked to speak with them while in lock-up. Defendant told the detectives that he had left the store, pulled his hoodie over his head and turned the corner when "Kiki," and an unknown black male with dreads said: "What's up?" Defendant saw the man with dreads "reach," so he pulled out his gun and shot three times. Defendant did not tell the detectives that the victim said: "What's up Lord." Defendant told the detectives that he sold the gun he used in the shooting to a person named Mike on 84th and Saginaw.

¶ 19 Defendant was acquitted of attempted murder but found guilty of aggravated battery with a firearm.

¶ 20 At the sentencing hearing, the State proffered a victim impact statement and testimony from the victim's mother and aunt. Mr. Murdock, who was 17-years old when he was shot, requires constant care. He endures pain and takes medication for life-threatening seizures. He

cannot play sports, hold a job, or date. Following the shooting, Mr. Murdock enrolled in a special-needs school but could not complete his education for financial reasons. The witnesses said that defendant had deprived Mr. Murdock of a normal life.

¶ 21 The State argued that Mr. Murdock's injuries required brain surgery and caused permanent physical and mental disabilities. The State also observed that defendant carried a gun that day and fired it multiple times in broad daylight. Defendant endangered not only Mr. Murdock, and Mr. Noble, but also Ms. Hancock, who was sitting nearby in a parked car. Based on the foregoing, the State contended that the maximum sentence of 30 years was necessary to deter others from similarly dangerous conduct.

¶ 22 According to the presentencing investigation report (PSI), defendant had no prior convictions, receives ongoing mental health treatment, and denied gang involvement or abusing alcohol, but acknowledged using marijuana. The PSI further stated that defendant had eight siblings, his parents abused drugs, the family had lived in a shelter and, at times, defendant had been in foster care.

¶ 23 In mitigation, defendant's mother testified that he grew up in an unstable environment and had been damaged by his parents' drug and alcohol addiction. Defendant was her seventh child and was born with traces of cocaine in his system. The Department of Children and Family Services placed him with relatives in his early childhood and, later, he was admitted for treatment and medication for mental health issues. Between the ages of 7 to 17, defendant occasionally lived in homeless shelters and had attended at least four grammar schools and two high schools. From September 2010 to June 2011, defendant struggled with the absence of his mother, who was incarcerated. Defendant's mother also stated that he was friendly, helped

others, did not hang out in the street, and attended church throughout his life. The testimony of defendant's mother was corroborated by defendant's father's statements contained in the PSI.

¶ 24 In mitigation, defense counsel argued that defendant had no criminal history and did not go to the store with the intention of shooting anyone, but felt threatened by Mr. Murdock and Mr. Noble. According to defense counsel, defendant left the store as quickly as possible without abandoning his girlfriend and fired his weapon only when he thought Mr. Noble was going for his gun. Defense counsel spoke about defendant's difficult circumstances as a child and the instability of his home life. Defense counsel emphasized that defendant had potential for rehabilitation, proffering letters of support from clergy, a letter from a friend of defendant whose child he helped care for, and a letter from an employee of a moving company for which defendant occasionally worked. Defense counsel also proffered academic progress reports and certificates of achievement from school and a religious studies program, all from defendant's time in custody.

¶ 25 Defendant, in allocution, acknowledged his "error of judgment due to lack of patience and immaturity." Defendant recognized the injury to the victim and stated that he wanted to "make a better life for myself and do well in society."

¶ 26 In imposing defendant's sentence, the trial court stated that it had considered all factors in aggravation and mitigation and recognized that, at the time of the shooting, defendant was 19-years old, had no criminal history, a history of medical issues, and "had a childhood where he basically had to fend for himself." The trial court observed that defendant had exhibited potential for rehabilitation by pursuing educational programs while in custody. The trial court also stated that it did not believe defendant felt threatened on the night of the shooting, or that he

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saw a gun in someone's waistband but, rather, performed the senseless act of shooting his gun several times into a crowd. The trial court noted that the victim was "forever crippled both in body and in cognitive function" due to defendant's acts. The trial court characterized the shooting as "a totally unprovoked crime" which "could have been easily avoided" and noted that it also had to consider deterrence as a sentencing factor. The trial court concluded:

"I don't believe a sentence to the maximum is appropriate when I weigh the matters in mitigation. I weigh heavily [defendant's] lack of a criminal background here.

Taking all the matters in aggravation and mitigation and also hoping that my sentence at some point in time will resonate with some people on the street, the defendant needs to be punished. Taking into consideration the rehabilitative potential of the defendant, I'm going to sentence the defendant to 16 years [sic] Illinois Department of Corrections."

The trial court subsequently denied defendant's motion to reconsider sentence.

¶ 27 On appeal, defendant contends that his sentence is excessive in light of the mitigating factors, including: his lack of criminal history; family history and circumstances; participation in caring for a friend's child; remorse; lack of gang involvement; lifelong church attendance; and lack of alcohol abuse. Defendant also argues that the trial court's sentence improperly considered the victim's injuries in aggravation and treated defendant as a scapegoat for Chicago street violence.

¶ 28 A conviction for aggravated battery with a firearm is a Class X felony, punishable by 6 to 30 years of incarceration. 720 ILCS 5/12-4.2(a)(1) (West 2011); 730 ILCS 5/5-4.5-25(a) (West 2011). A sentence falling within the statutory range is excessive only if it contradicts the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense (*People v. Alexander*, 239 Ill. 2d 205, 212 (2010)). However, sentencing is entitled to great deference as the trial court is best positioned to weigh aggravating and mitigating factors. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The trial court is presumed to consider mitigating evidence and is not obligated to recite or assign a value to each fact presented at sentencing. *People v. Meeks*, 81 Ill. 2d 524, 534 (1980); *People v. Hill*, 408 Ill. App. 3d 23, 30 (2011). In determining whether a sentence is excessive, we apply an abuse-of-discretion standard of review. *People v. Patterson*, 217 Ill. 2d 407, 448 (2005). A reviewing court will not substitute its judgment merely because it would have weighed the aggravating and mitigating factors differently. *Stacey*, 193 Ill. 2d at 209.

¶ 29 The length of defendant's sentence falls in the mid-range for a Class X felony and reflected the trial court's careful balancing of the dual purposes of a sentence: punishment and rehabilitation. In determining defendant's sentence, the trial court stated it had considered all the appropriate factors and the evidence presented at the sentencing hearing and at trial. The trial court recognized the danger of "shooting at 7:00 o'clock on a June evening into a crowd," but refrained from imposing the maximum sentence due to "the rehabilitative potential of the defendant" and his lack of criminal history. The trial court considered defendant's academic progress while incarcerated and his sense of regret over the shooting, and also considered testimony, arguments, and letters related to defendant's family ties, employment history, unstable childhood, participation in caring for a friend's child, and lifelong church attendance. However,

defendant's rehabilitative potential is not entitled to greater weight than the seriousness of his offense. *Alexander*, 239 Ill. 2d at 213-14. Each mitigating factor now raised by defendant on appeal was given attention at sentencing and, in light of the record, we cannot say that the trial court abused its discretion in sentencing defendant to a term of 16 years' imprisonment.

¶ 30 The trial court did acknowledge that the incident occurred in the context of widespread urban violence, but based its sentence on proper aggravating factors which included the threat of serious harm to innocent bystanders and the need for deterrence. *Id.* at 213-14 (affirming sentence where shots were fired into a crowd of people "with total disregard for the potential harm to others," while taking into account defendant's age at the time of the offense, unstable family background, and potential for rehabilitation). We reject, as unfounded, defendant's argument, that he was treated as a scapegoat.

¶ 31 Defendant also argues that the trial court improperly considered the extent of the victim's injury in aggravation, as that is a factor implicit in the offense of aggravated battery with a firearm. However, a court in sentencing may consider, in aggravation, the nature and circumstances of the crime and the "degree of harm caused to the victim," even where serious bodily harm is implicit in the offense. *People v. Saldivar*, 113 Ill. 2d 256, 269 (1986). The trial court here considered defendant's conduct of shooting a gun into a crowd, the threatened harm of such conduct to the people at the scene, and the degree of harm to the victim. The resulting sentence was well within the statutory range and not an abuse of discretion.

¶ 32 For the foregoing reasons, we affirm the sentence of the trial court.

¶ 33 Affirmed.