2019 IL App (1st) 161646-U

SIXTH DIVISION
January 25, 2019

No. 1-16-1646

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
	)	Appeal from the
	)	Circuit Court of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	12 CR 13240
	)	
DERRICK GRAY,	)	
	)	
	)	Honorable Thomas M. Davy,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Delort and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court properly denied defendant's motion to quash arrest and suppress evidence where police officers conducted a proper *Terry* stop; hearsay testimony that included a physical description of suspects did not amount to plain error; the State proved beyond a reasonable doubt that defendant possessed a firearm during the commission of the robbery; the case is remanded for resentencing under the amended firearm sentencing statute that made the enhancement discretionary for minors.

¶ 2 Following a bench trial, 17-year-old defendant, Derrick Gray, was convicted of armed robbery while armed with a firearm and sentenced to 23 years in prison. On appeal, defendant

argues that (1) the trial court erred by denying his motion to quash arrest and suppress evidence; (2) the trial court violated defendant's right to confront his accusers when it allowed officers to testify to inadmissible hearsay evidence; (3) the State failed to prove beyond a reasonable doubt that the item displayed during the events in question was a firearm; and (4) the trial court failed to advise defendant that he could be sentenced under section 5-4.5-105(b) of the Unified Code of Corrections (730 ILCS 5/5-4.5-105(b) (West 2016)). For the reasons that follow, we affirm the judgment of the trial court but remand for resentencing.

¶ 3 BACKGROUND

¶ 4 The State charged defendant and co-defendant, Marellis Fields, with the July 6, 2012, robbery with a firearm and unlawful restraint of the victim, Dion Baugh. Prior to trial, defendant filed a motion to quash arrest and suppress evidence, alleging officers illegally seized him. At the hearing, defendant testified that on July 6, 2012, at around 8:15 a.m., he and Fields were walking northbound from a restaurant at 69th and Halsted Street in Chicago. Defendant testified that he was wearing blue jeans and a white t-shirt. Fields had his hair in dreadlocks and was also wearing blue jeans and a white t-shirt.

¶ 5 Defendant testified that at 67th Street and Lowe, officers began chasing them, and they ran northbound toward 65th Street. Defendant testified that he ran from the officers because he "was scared." Defendant stated that an officer caught up to them and without showing an arrest warrant or search warrant, handcuffed defendant with his hands behind his back and put him in to the back of a marked squad car with the doors locked. An officer drove defendant to another location for a showup identification.

¶ 6 Detective William Levigne testified on behalf of the State that between 8:30 and 9 a.m. on July 6, 2012, he was driving eastbound on 67th Street in an unmarked police car when he

heard two calls over the police radio. One call was about a person with a gun and the other was about an armed robbery that had just occurred at 6935 South Union Street. Detective Levigne stated that the description he received of the individuals being sought in connection with these crimes was as follows: "One was a male black with a white T-shirt and blue jeans with twists in his hair. The second individual [was] a taller male black short hair."

¶ 7 Detective Levigne testified that he received information over the radio about other officers that were chasing the suspects on foot. Based on that information, he parked his car at 66th Street and Lowe in an attempt to catch the suspects. He testified that he "saw two individuals matching the description of wanted individuals for the armed robbery. They were on foot. They were running. They were running northbound on Lowe." Detective Levigne stated that he did not see any officers behind the two individuals. Detective Levigne testified that he pursued the two individuals and detained defendant at 6531 South Lowe Avenue as defendant tried to enter an apartment building. Detective Levigne stated that he handcuffed defendant and that other officers detained codefendant Fields.

¶ 8 Detective Levigne testified that defendant was not free to go and stated that the officers had no warrants for him. Another officer drove defendant to 6642 South Lowe, a block away, for a showup identification with the victim of the armed robbery.

¶ 9 The trial court denied defendant's motion to quash arrest and suppress evidence, finding that defendant and Fields were a short distance away from the alleged crime scene, were running, and they matched the radio descriptions. The court stated:

> "So I believe that on the state of the law at this point that it would be based on the totality of the circumstances a justifiable *Terry* stop. The defendant could be handcuffed for officer's safety, especially when the incident that was described

> was an armed robbery. That the detention was going to be for a brief period of time to determine if an identification [could] be made."

¶ 10 Defendant filed a motion to reconsider, which was denied, and the case proceeded to trial.

¶ 11 At a bench trial, the victim, Dion Baugh, testified that he had a 2004 federal conviction for gun possession and providing false statements for which he was sentenced to 63 months in prison. He also testified that he had a felony theft conviction from McHenry County that occurred 18 months before trial.

¶ 12 Baugh testified that on July 6, 2012, at approximately 6 to 7:30 a.m., he was mowing a friend's lawn at 6935 South Union Street, when two individuals jumped over a waist-high fence. One of the men, whom Baugh identified as defendant, pointed a gun in his face and told him to "[g]et down." Baugh had never seen defendant before. He testified that defendant was "100%" the man who pointed the gun at him.

¶ 13 Baugh testified that defendant put the gun to the right side of Baugh's face and attempted to make him lay down on his stomach. Baugh testified that the gun was "black, it was a 9 millimeter." Baugh testified that the second person who jumped over the fence also had a gun that he pointed at Baugh. He had dreadlocks, while defendant was tall, thin, with short hair, and wearing a white t-shirt. Baugh testified that there was a third individual who did not jump over the fence but stood in the alley behind the house. Baugh testified that defendant told Fields to search Baugh, and that Fields took Baugh's keys and wallet, which contained $600.

¶ 14 Baugh testified that the two individuals then jumped back over the fence. Baugh ran to the front of the house to knock on the door, but at the same time Baugh heard police sirens. Baugh testified that officers arrived and he spoke to them. A short time later, Baugh was driven a

few blocks away to a location where he identified defendant as one of the individuals who robbed him. Baugh testified that officers later helped him locate his keys and wallet in an empty lot that was one block east of 6935 South Union Street. The wallet did not contain any money.

¶ 15 Officer Leon Solana testified that he was working alone on July 6, 2012, at around 8 a.m. when he heard a radio call of an armed robbery occurring near 6742 South Lowe Avenue, where Officer Solana was located. Officer Solana testified that he heard a description of the two individuals over the radio, and then saw "two males matching the description given over the radio." When asked what the description was, Officer Solana stated, "Um, two male blacks, one was taller, one was shorter. Shorter one had curls in his hair. And both wearing white T-shirts." Officer Solana testified that he did not see either person with a firearm. The individuals ran northwest. Officer Solana tried to chase them but lost sight of them. Later, he saw defendant when another officer had him in custody. Officer Solana testified that there were 15 to 20 officers involved in the pursuit of the suspects.

¶ 16 Detective Levigne testified that at around 8:35 to 8:40 a.m. on the date in question, he heard two radio calls. He stated, "The first call was a person with a gun. The second call was an armed robbery that just occurred." When asked what description was given over the radio, Detective Levigne stated, "Two male blacks, one was with a white T-shirt and twists or dreadlocks in his hair, and the other individual was a taller male, black, dressed in blue jeans." Detective Levigne testified that he parked his car in anticipation of the individuals running by him. About 10 to 15 minutes later, he saw two individuals matching the description that had been given over the radio. They were both running, so Detective Levigne exited his vehicle and pursued them on foot. He did not see any other officers pursuing them. He identified defendant as one of the two individuals he saw running.

¶ 17 The prosecutor then asked Detective Levigne, "What description did the defendant match that you heard?" Detective Levigne answered, "Male black, I believe he had a white T-shirt. One of the individuals had a white T-shirt and one was taller than the other and had shorter hair." Detective Levigne testified that he detained defendant at 6531 South Lowe Avenue by placing him in handcuffs, and that he was then assisted by other officers. Detective Levigne testified that no firearm was recovered.

¶ 18 The trial court found defendant guilty on all counts. In finding defendant guilty, the trial court noted that "Mr. Baugh's testimony in and of itself *** might not be enough, but there was that corroborating testimony of Mr. Baugh's testimony." The trial court further stated, "Officer Solana testified that he responded to an armed robbery that had just occurred, called out a description, and saw two male blacks matching the description, one taller, the other shorter." The trial court also stated that Detective Levigne had testified that "[t]he individuals were at 67th and Union, described as two male blacks, one with a white T with a twist and dreads in his hair. The second taller and wearing blue jeans."

¶ 19 Defendant filed a motion for a new trial, arguing that Baugh was not a credible witness and that there was lack of proof as to the firearm element of the offense. The trial court denied the motion and on November 13, 2015, sentenced defendant to 23 years in prison, which included a mandatory 15-year firearm enhancement.

¶ 20 On December 11, 2015, defendant filed a motion to reconsider his sentence along with a motion to reconsider ruling on defendant's motion for a new trial. The court held a hearing on both motions. On December 16, 2015, the court found that in reviewing the totality of the circumstances, including some inconsistencies in Baugh's testimony, the State proved the charge of armed robbery while armed with a firearm beyond a reasonable doubt. The trial court stated

that when it imposed "the 23-year sentence, that it was only two years extra because I had considered [defendant's] lack of background and potential for rehabilitation." The court then continued the case until January 8, 2016, for the parties to calculate sentencing credit. The State asked if the defense would be filing any more motions and the defense counsel stated that it would not. The trial court then stated, "Well, [the] Supreme Court may, between now and then, surprise everyone and say, Hey, we were wrong back 10 or 15 years ago, and the 15-year wouldn't apply, then certainly."

¶ 21 On December 17, 2015, codefendant Fields pleaded guilty to armed robbery with a dangerous weapon and received 10 years in prison. On January 8, 2016, defendant filed a motion to reconsider the application of the firearm enhancement based on his codefendant's guilty plea and a motion to reconsider his sentence as disparate from his codefendant's sentence. The court continued the case to February 10, 2016, for argument on both motions.

¶ 22 On February 10, 2016, the trial court denied both motions. The court granted a stay of the mittimus to February 19, 2016, so defendant could transfer his belongings to family members. On February 19, 2016, an order of commitment and sentence was entered stating that defendant was sentenced to 23 years in prison with credit for 1324 days of presentence custody. This appeal followed.

¶ 23 ANALYSIS

¶ 24 On appeal, defendant contends that (1) the trial court erred in denying his motion to quash arrest and suppress evidence; (2) the trial court violated defendant's right to confront his accusers when it allowed officers to testify to inadmissible hearsay evidence; (3) the State failed to prove beyond a reasonable doubt that the item displayed during the events in question was a

firearm; and (4) the trial court failed to advise defendant that he could be sentenced under section 5-4.5-105(b) of the Unified Code of Corrections (730 ILCS 5/5-4.5-105(b) (West 2016)).

¶ 25 Motion to Quash Arrest and Suppress Evidence

¶ 26 Defendant's first argument on appeal is that the trial court erred in denying defendant's motion to quash arrest and suppress evidence. Defendant contends that the police lacked probable cause to believe that defendant committed a crime before arresting him. The State responds that the police officers properly performed a *Terry* stop and their temporary restraint of defendant did not amount to an arrest.

¶ 27 When reviewing a trial court's decision regarding a motion to quash arrest and suppress evidence, we must accord great deference to the trial court's factual findings and credibility assessments and will reverse those findings only if they are against the manifest weight of the evidence. *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001). However, we review *de novo* the ultimate finding with respect to probable cause or reasonable suspicion. *Id*.

¶ 28 In appropriate circumstances, a police officer may approach a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest. *Terry v. Ohio*, 392 U.S. 1, 22 (1968); see also 725 ILCS 5/107-14 (West 2014) (codifying *Terry* stops). A police officer may stop a person for temporary questioning if the officer has knowledge of "sufficient articulable facts at the time of the encounter to create a reasonable suspicion that the person in question has committed or is about to commit a crime." *People v. Lee*, 214 Ill. 2d 476, 487 (2005). The reasonableness of an investigatory stop may be determined by examining whether the police officers were aware of specific facts giving rise to reasonable suspicion and whether the police intrusion was reasonably related to the known facts. *People v. Starks*, 190 Ill. App. 3d 503, 506 (1989). The officer's suspicion must amount to more than an

inarticulate hunch, but need not rise to the level of suspicion required for probable cause. *People v. Close*, 238 Ill. 2d 497, 505 (2010). "A general description of a suspect coupled with other specific circumstances that would lead a reasonably prudent person to believe the action taken was appropriate can constitute sufficient cause to stop or arrest." *People v. Ross*, 317 Ill. App. 3d 26, 29-30 (2000) (citing *People v. Robinson*, 299 Ill. App. 3d 426, 431 (1998)).

¶ 29 The evidence here established that on the morning in question, Detective Levigne received a call over the radio that an armed robbery had just occurred, and a description of the suspects was given. Detective Levigne parked at 66th and Lowe to see if the suspects would appear. "Ten or fifteen minutes later," two individuals that matched the description of the offenders emerged from the back of a residence and ran north on Lowe. Detective Levigne exited his vehicle and gave chase. He testified that the alleged offenders looked in his direction and continued to run. Detective Levigne caught defendant at 6531 South Lowe and handcuffed him. Defendant was transported one block, where he was identified in a showup by the victim. The armed robbery had occurred at 6935 South Union, approximately three blocks from where defendant was apprehended. These facts provide at least the minimal articulable suspicion required to stop defendant. *People v. Booker*, 2015 IL App (1st) 131872 (investigatory stop was proper where officers received call of a man with a gun, and observed a man matching description three blocks from the scene of crime approximately 10 to 15 minutes after the offense had occurred); *People v. Walters*, 256 Ill. App. 3d 231, 236 (1994) (reasonable suspicion can be derived from seeing suspect similar to one believed to be fleeing from a recent crime in the general area where fleeing suspect would be expected to be found, given the time and distance from the crime scene). Therefore, we conclude that the investigatory stop was proper.

¶ 30 Next, we must consider whether the investigatory stop of defendant constituted or was converted into an arrest before the victim identified defendant. Defendant asserts that the police effected an arrest by handcuffing him, placing him in a squad car, and transporting him to the victim for identification. "An investigatory stop is distinguished from an arrest based on the length of detention and the scope of investigation following the initial stop, not the initial restraint of movement." *Ross*, 317 Ill. App. 3d at 30. The State bears the burden of showing that a seizure based on reasonable suspicion was sufficiently limited in scope and duration. *People v. Brownlee*, 186 Ill. 2d 501, 519 (1999).

¶ 31 In the case at bar, neither the length of detention nor the scope of investigation transformed the lawful investigatory stop into an arrest. Defendant was transported only one block from where the police effectuated defendant's stop to where the victim identified him in a showup. Thus, the length of defendant's detention was very brief. See *Ross*, 317 Ill. App. 3d at 30-31 (detention was very brief where police officers transported defendant only one block for a showup).

¶ 32 The scope of the *Terry* stop conformed to appropriate procedures because it was brief and determinative in nature. The purpose of a *Terry* stop is to allow police officers to investigate the circumstances that provoke suspicion and either confirm or dispel suspicions. *People v. Fasse*, 174 Ill. App. 3d 457, 460-61 (1988). The scope of investigation must be reasonably related to the circumstances that justified the police interference and the investigation must last no longer than necessary to effectuate the purpose of the stop. *Brownlee*, 186 Ill. 2d at 519. Here, a brief stop with a quick determination as to defendant's involvement with the crime comports with the permissible scope of an investigation after a *Terry* stop. See *Ross*, 317 Ill. App. 3d at 31 (eight-minute stop with quick determination of person's involvement in crime falls within permissible

scope of an investigation after a *Terry* stop). We note that transporting a suspect for the purpose of an identification is not necessarily an unreasonable seizure under the fourth amendment. *People v. Lippert*, 89 Ill. 2d 171, 181-82 (1982). While an unreasonable seizure may be found where the person is transported to an institution-like setting like a police station or interrogation room, "the transportation of a suspect for purposes of a showup when the officer is conducting a field investigation immediately after the commission of a crime and when the victim, a short distance away, could confirm or deny the identification of the suspect may not be an unreasonable seizure under the fourth amendment." *People v. Follins*, 196 Ill. App. 3d 680, 693 (1990).

¶ 33 Here, the restraint of defendant did not transform the investigatory stop into an arrest. "[T]he status or nature of an investigatory stop is not affected by either the drawing of a gun by the police officer [citation] or by the use of handcuffs [citation] or by placing the person in a squad car [citation]." *Ross*, 317 Ill. App. 3d at 32. Here, the police officer knew that the offender he was seeking had committed an armed robbery, and thus likely had a weapon on his person. A reasonably prudent person in these circumstances would be warranted in the belief that his safety or that of others was in danger, and we will not second-guess the police officer's decisions here. See *People v. Smith*, 208 Ill. App. 3d 44, 50 (1991). Under the facts and circumstances in the present case, we find that the investigatory stop was properly based upon reasonable suspicion and did not give rise to an arrest until after the victim's positive identification.

¶ 34 Hearsay Evidence

¶ 35 Defendant's next argument on appeal is that the trial court violated his right to confront his accusers where it allowed the State to elicit from multiple officers the hearsay contents of a radio call that provided a description of the alleged offenders, and where the trial court relied

upon those hearsay comments to find defendant guilty. Defendant admits that he did not properly preserve this alleged error for review since he did not object to it at trial and did not include it in a posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (objection both at trial and in posttrial motion required to preserve an issue for appeal). Defendant contends that the issue should nevertheless be reviewed under the plain error doctrine. The plain error doctrine allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Piatowski*, 225 Ill. 2d 551, 565 (2007). In a plain error analysis, it is the defendant who bears the burden of persuasion. *People v. Sebby*, 2017 IL 119445, ¶¶ 51-52. However, "[t]he initial analytical step under either prong of the plain error doctrine is [to] determine whether there was a clear or obvious error at trial." *Id*. ¶ 49.

¶ 36 Defendant contends that the allegedly improper hearsay statements came from Detective Levigne and Officer Solana. Defendant notes that during the officers' respective testimony, they repeated the contents of the radio calls they heard. Detective Levigne testified that the suspects were described as "[t]wo male blacks, one with a white t-shirt and twists or dreadlocks in his hair, and the other individual was a taller male, black, dressed in blue jeans." Officer Solana testified that he heard a description of the officers as "two male blacks, one was taller, one was shorter. Shorter one had curls in his hair. And both wearing white T-shirts." Defendant argues that these statements were improper hearsay statements.

¶ 37 Where testimony of an out-of-court statement is offered, not for the truth of the matter asserted, but for the limited purpose of explaining the reason the police conducted their investigation as they did, the testimony is not objectionable on the grounds of hearsay. *People v. Rodriguez*, 312 Ill. App. 3d 920, 929 (2000). " 'In criminal cases, an arresting or investigating officer should not be put in the false position of seeming just to have happened upon the scene; he should be allowed some explanation of his presence and conduct.' " *People v. Cameron*, 189 Ill. App. 3d 998, 1004 (1989) (quoting E. Cleary, McCormick on Evidence § 249, at 734 (3d ed. 1984)). However, the testimony of the officers regarding the words of the radio communication must not be used for their truth by the prosecution, but only used to show that the words were spoken when the fact that they were spoken satisfies a relevant nonhearsay purpose. *People v Simms*, 143 Ill. 2d 154, 174 (1991).

¶ 38 In the instant case, the substance of the radio call was testified to repeatedly by Detective Levigne and Officer Solana. The substance of the radio call was also referred to by the trial court when it stated, "Mr. Baugh's testimony in and of itself *** might not be enough, but there was that corroborating testimony of Mr. Baugh's testimony." The trial court further stated, "Officer Solana testified that he responded to an armed robbery that had just occurred, called out a description, and saw two male blacks matching the description, one taller, the other shorter." The trial court also stated that Detective Levigne had testified that "[t]he individuals were at 67th and Union, described as two male blacks, one with a white T with a twist and dreads in his hair. The second taller and wearing blue jeans."

¶ 39 When the content of the out-of-court statement goes to "the very essence of the dispute," the balance tips against admissibility. *People v. Warlick*, 302 Ill. App. 2d 595, 600 (1998). Here, the contents of the radio call included a description of the offense, armed robbery, as well as a

description of defendant. These words go to the essence of the dispute: "whether the defendant was the man who committed the crime." *People v. Rivera*, 277 Ill. App. 3d 811, 818 (1996). We find that admission of the contents of the radio call was an error, but that defense counsel did not call this error to the trial court's attention. Given the strength of the properly admitted evidence against defendant, we do not believe the hearsay identification rose to the level of plain error under the circumstances of this case. See *People v. Rice*, 321 Ill. App. 3d 475, 484 (2001). We do not find the evidence to be closely balanced. Baugh specifically testified two individuals jumped over the fence while he was mowing the lawn. He identified defendant in court as one of the individuals. Baugh testified that defendant put the gun to the side of his face and made him lay down on his stomach while codefendant Fields took his wallet. Baugh testified that codefendant had dreadlocks while defendant was tall, thin, with short hair, and wearing a white t-shirt. The police officers testified that they received a call over the radio that prompted Officer Solana to give chase to two individuals matching the description given over the radio. The radio call also prompted Detective Levigne to park his car and wait for the suspects. He saw two suspects matching the description given over the radio and gave chase. He eventually caught defendant and handcuffed him. Shortly thereafter, defendant was identified by Baugh. We also do not believe that this hearsay error was so fundamental as to deny defendant a fair trial. *Id.* Accordingly, we find that while it was error to allow the officers to testify to the contents of the radio call, the admission of inadmissible hearsay evidence did not amount to plain error.

¶ 40 Sufficiency of Evidence

¶ 41 We next address defendant's argument that the State failed to prove beyond a reasonable doubt that the item displayed during the events in question was a firearm. The State responds that it proved beyond a reasonable doubt that defendant possessed a firearm during the commission

of the charged crime where the victim testified that defendant held a black nine-millimeter gun to his head and robbed him. The relevant question on a challenge to the sufficiency of the evidence is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the crime's essential elements beyond a reasonable doubt. *People v. Pollock*, 202 Ill. 2d 189, 217 (2002). If we find that the evidence meets this standard, we must affirm the conviction (*People v. Herrett*, 137 Ill. 2d 195, 203 (1990)); we will not retry the defendant (*People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011)). A trier of fact's findings are accorded great weight because the trier of fact observed and heard the witnesses firsthand and therefore is "best equipped to determine the witnesses' credibility, weigh their testimony, draw reasonable inferences from the evidence, and ultimately choose among conflicting accounts of events." *People v. Henderson*, 2016 IL App (1st) 142259, ¶ 166.

¶ 42 Defendant was charged with armed robbery in that while committing robbery, he carried or was otherwise armed with a firearm, as defined by the Firearm Owners Identification (FOID) Card Act. 720 ILCS 5/2-7.5 (West 2012). The FOID Card Act defines a "firearm" as "any device by whatever name known, which is designed to expel a projective or projectiles by the action of an explosion, expansion of gas or escape of gas." 430 ILCS 65/1.1 (West 2010).

¶ 43 In the case at bar, the victim testified that defendant pointed a gun at his head during the commission of the robbery. The victim testified that defendant's gun was a black nine-millimeter gun. Although the gun was never recovered, the victim's testimony alone was sufficient to prove beyond a reasonable doubt that defendant was in possession of a firearm during the commission of the robbery. In fact, our supreme court has recently reiterated that the testimony of a single eyewitness that a gun or pistol was used in a robbery is sufficient to permit a trier of fact to conclude that a firearm was used in the offense despite the lack of a recovered weapon. See

People v. Wright, 2017 IL 119561, ¶ 76; *People v. Davis*, 2015 IL App (1st) 121867, ¶ 12 ("eyewitness testimony that the offender was armed with a gun, combined with circumstances under which the witness was able to see the weapon, is sufficient to allow a reasonable inference that the weapon was a real gun."); *People v. Fields*, 2014 IL App (1st) 110311, ¶ 36 ("unequivocal testimony of a witness that the defendant held a gun is circumstantial evidence sufficient to establish that a defendant is armed during a robbery.") Accordingly, we find that the State proved beyond a reasonable doubt that defendant possessed a firearm during the commission of the robbery.

¶ 44 Sentence

¶ 45 As a final matter, we address defendant's contention that the trial court failed to advise defendant that he could be sentenced under section 5-4.5-105(b) of the Unified Code of Corrections (Code) (730 ILCS 5/5-4.5-105(b) (West 2016)), which made discretionary the mandatory 15-year sentence enhancement that was applied to defendant's sentence. Pursuant to Public Act 99-69 (eff. Jan. 1, 2016), and Public Act 99-258 (eff. Jan. 1, 2016), our legislature has provided that "[o]n or after the effective date of this amendatory Act of the 99th General Assembly, when a person commits an offense and the person is under 18 years of age at the time of the commission of the offense, the court must consider specific sentencing factors applicable to juveniles." 730 ILCS 5/5-4.5-105(b) (West 2016). As of January 1, 2016, trial courts have discretion to decline to impose firearm enhancements, such as the one applied to defendant's sentence, for persons under 18 years of age at the time of the commission of the offense. *Id.* The State maintains, however, that the trial court properly imposed the mandatory 15-year sentence enhancement where defendant was sentenced on November 13, 2015, more than six weeks before the firearm enhancement amendment came into effect on January 1, 2016.

¶ 46 Whether the statutory amendment at issue here applies to defendant's case presents an issue of statutory construction that we review *de novo*. *People ex rel. Madigan v. J.T. Einoder, Inc.*, 2015 IL 117193, ¶ 27. As defendant notes, the Illinois Supreme Court has recently affirmed that section 4 of the Statute on Statutes (5 ILCS 70/4 (West 2016)), defines the temporal reach of section 5-4.5-105(b). *People v. Hunter*, 2017 IL 121306, ¶¶ 52-54. Section 4 states in pertinent part:

> "No new law shall be construed to repeal a former law, whether such former law is expressly repealed or not, as to any offense committed against the former law, or as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued, or claim arising under the former law, or in any way whatever to affect such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued, or claim arising before the new law takes effect, save only that the *proceedings thereafter shall conform, so far as practicable, to the laws in force at the time of such proceeding*. If any penalty, forfeiture or punishment be mitigated by any provisions of a new law, such provision may, by the consent of the party affected, be *applied to any judgment pronounced after the new law takes effect*." (Emphasis added.) 5 ILCS 70/4 (West 2016).

¶ 47 "Judgment" means an "adjudication by the court that defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court." 730 ILCS 5/5-1-12 (West 2016). The State contends that because judgment was entered on November 13, 2015, when the trial court pronounced defendant's sentence, the amended sentencing statute does not apply.

¶ 48 Here, on December 11, 2015, defendant filed a motion to reconsider his sentence, along with a motion for leave to file a motion to reconsider the ruling on his motion for a new trial. The court granted defendant leave to file the motion to reconsider the ruling on defendant's motion for a new trial, and held a hearing on both motions on December 16, 2015. At that hearing, the court stated that when it imposed "the 23-year sentence, *** I had considered [defendant's] lack of background and potential for rehabilitation." The court then continued the case until January 8, 2016, for the parties to calculate sentencing credit. When defense counsel indicated that it would not be filing any more motions before then, the trial court stated that our supreme court could, between now and then, "say, Hey, we were wrong back 10 or 15 years ago, and the 15-year wouldn't apply, then certainly."

¶ 49 On January 8, 2016, defendant filed a motion to reconsider the application of the firearm enhancement based on his codefendant's guilty plea and a motion to reconsider his sentence as disparate from his codefendant's sentence. The court continued the case to February 10, 2016, for argument on both motions. On February 10, 2016, after a hearing, the trial court denied both motions.

¶ 50 It is of note to us that if the trial court had granted defendant's motion to reconsider sentence that was filed on December 11, 2015, the new sentencing hearing may have taken place after January 1, 2016, at which point the new sentencing hearing would have to "conform, so far as practicable, to the laws in force at the time of such proceeding," which would include the new firearm enhancement amendment. 5 ILCS 70/4 (West 2016). Additionally, motion to reconsider sentence that was filed on January 8, 2016, had been granted, or at least included this issue of the new sentencing enhancement statute, the new sentencing amendment would have applied at the new sentencing hearing. In this narrow set of circumstances, where judgment had been entered,

but proceedings were still ongoing at the time the amendment took effect, we find that the amendment should have been applied to defendant's sentence.

¶ 51 We find support for this conclusion in our supreme court's recent rulings. Our supreme court, in *People ex rel. Alvarez v. Howard*, 2016 IL 120729, ¶ 28 (quoting *People v. Zibrio*, 242 Ill. 2d 34, 46 (2011)), stated that "[u]nder section 4, substantive amendments may not be applied retroactively, but 'procedural law changes will apply to ongoing proceedings.' " It has also stated that application of the Statute on Statute's default rule means that the amended statute "would apply retroactively to a pending case, *i.e.*, a case in which the trial court proceedings had begun on the old statute but had not yet been concluded." *Hunter*, 2017 IL 121306, ¶ 30. We have an obligation to construe statutes in a manner that will avoid absurd, unreasonable, or unjust results that the legislature could not have intended. *People ex rel. Alvarez v. Gaughan*, 2016 IL 120110, ¶ 19. As our supreme court has recently observed, "the process of statutory construction should not be divorced from consideration of real-world results." *People v. Fort*, 2017 IL 118966, ¶ 35. Here, the State's interpretation of the statute would lead to an absurd result – one in which if the trial court had granted either of defendant's motions to reconsider his sentence, the amended statute would apply at the new sentencing hearing, but where if the motions to reconsider were denied, the statute would not apply.

¶ 52 We find that under the narrow circumstances of this case, where the judgment occurred on November 13, 2015, but where the case was still pending before the trial court until February 19, 2016, the amended statute should have applied. If defense counsel had presented a motion to reconsider defendant's sentence based on this new amendment, or if the trial court had granted either of defendant's motions to reconsider sentence, the amended sentencing scheme would have applied at defendant's new sentencing hearing. See *People v. Bryant*, 369 Ill. App. 3d 54,

61 (2006) (stating that the purpose of a motion to reconsider "is to bring to the trial court's attention changes in the law, errors in the court's previous application of existing law, and newly discovered evidence ***.") "A court in a criminal case has inherent power to reconsider and correct its own rulings, even in the absence of a statute or rule granting it such authority." *People v. Mink*, 141 Ill. 2d 163, 171 (1990). As our supreme court has stated, "[s]o long as the case was pending before it, the trial court had jurisdiction to reconsider any order which had previously been entered." *Id*. Here, the case was certainly still pending before the trial court when the amended law took effect on January 1, 2016, and the trial court could have reconsidered its sentence in light of the amendment. See *Hunter*, 2017 IL 121306, ¶ 30 (application of the Statute on Statute's default rule meant that the amended statute "would apply retroactively to a pending case, *i.e.*, a case in which the trial court proceedings had begun on the old statute but had not yet been concluded.") Accordingly, we remand this matter to the trial court with directions that a new sentencing hearing be held in accordance with the sentencing scheme found in section 5-4.5-105(b) of the Code (730 ILCS 5/5-4.5-105(b) (West 2016)). See *People v. Reyes*, 2016 IL 119271, ¶ 12 (defendant entitled on remand to be resentenced under sentencing scheme found in section 5-4.5-105).

¶ 53 CONCLUSION

¶ 54 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County, but remand for resentencing under the new sentencing provisions discussed in this order.

¶ 55 Affirmed; remanded for resentencing.