2019 IL App (1st) 173033-U

No. 1-17-3033

Order filed September 30, 2019

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 10978
	)	
DEMETRIUS SCHAFFER,	)	Honorable
	)	Joseph M. Claps,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE GORDON delivered the judgment of the court.
Justices Lampkin and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's sentence of 12 years' imprisonment for committing aggravated battery with a firearm is not excessive.

¶ 2 Following a bench trial, defendant Demetrius Schaffer was convicted of three counts of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2010)), each involving a

different victim, and sentenced to three concurrent terms of 12 years' imprisonment.[1] On appeal, defendant contends that his sentence is excessive. For the reasons that follow, we affirm.

¶ 3 Defendant's conviction arose from the June 15, 2011, shooting of Tequilla Kirby, Carnell Jones, Quincia Johnson, and Shawnteria Mollison in Chicago. Following his arrest, defendant was charged with 12 counts of attempted first degree murder, 4 counts of aggravated battery with a firearm, 2 counts of armed violence, 2 counts of possession of a stolen motor vehicle, and 2 counts of aggravated unlawful use of a weapon (AUUW).

¶ 4 At trial, Shawnteria Mollison testified that in the early morning hours of the date in question, she was at her Chicago apartment complex, sitting on her front porch with her friend, Quincia Johnson. Around 2 a.m., Mollison, who was 13 years old, texted Carnell Jones, whom she described as her "godbrother" and babysitter, to say she was hungry and wanted to go to a restaurant. Jones, who was standing at the gate, arranged for Tequilla Kirby to pick them up in her motor vehicle.

¶ 5 When Kirby arrived, Mollison, Johnson, and Jones all entered into the back seat. About two seconds later, Mollison heard gunshots. She "balled up" and put her head down. The vehicle crashed into a tree. Although shots kept firing, Mollison lifted her head. She observed defendant, who was about "four steps" away from the vehicle, walking toward them in a squatting position. Defendant was holding a "huge" gun and wearing black clothing and a black hat. Mollison explained that she knew defendant from the community and identified him in court. Mollison pushed Johnson's head down and ducked back down. More shooting ensued, during which Mollison's left hand was hit by a bullet. Mollison did not observe anyone other than defendant

[1] Defendant was tried at a simultaneous but severed bench trial with a codefendant, Lavelle Alford. Alford is not a party to this appeal.

with a gun, but stated that it sounded like several guns were going off at the time and estimated she heard about 80 gunshots in total.

¶ 6 Mollison exited the vehicle. She observed that Johnson's shoes and Kirby's face were bloody. Mollison was taken to the emergency room, where she was treated for a gunshot wound to her ring and middle fingers and injuries to the right side of her face from the vehicle impact. After an initial emergency surgery on her fingers, Mollison had a second surgery where a bone was taken from her wrist and placed into her finger, and a third surgery during which a "fragment" was removed from one finger. Mollison testified that being shot caused her "a lot of pain and suffering," resulted in sleepless nights, and prevented her from participating in sports. She added that her finger still hurt "real bad when the weather break." After Mollison was released from the emergency room, she went to the police station and identified defendant in a lineup.

¶ 7 Quincia Johnson testified that around 2 a.m. on the day in question, when she was 16 years old, she, Mollison, and Jones entered into Kirby's vehicle to get something to eat. As soon as they closed the vehicle doors, "a lot" of gunshots were fired. Johnson looked to determine where the gunfire was coming from. She observed four or five men wearing all black, walking up to the vehicle and shooting at it. After the vehicle went over a speed bump and crashed into a tree, she looked up and recognized defendant as one of the gunmen. Johnson explained that she knew defendant from the neighborhood, and identified him in court. Defendant was holding a "long" gun and was 8 to 10 feet from the vehicle.

¶ 8 When Johnson eventually exited the vehicle, her arm was bleeding. Mollison's hand was bleeding, and Kirby was "just bloody everywhere." Johnson was treated at the hospital for a

gunshot graze on her left wrist. Later that day, she went to the police station and identified defendant in a lineup.

¶ 9 Carnell Jones, who acknowledged that he was currently in jail awaiting trial for murder, testified that around 2 a.m. on the day in question, he was in a vehicle with Kirby, Mollison, and Johnson when the vehicle "got shot up." Jones could not recall how many shots were fired and did not observe anyone with guns. His left buttock was grazed by a bullet. At the hospital, he was treated for a gunshot wound. On cross-examination, Jones testified he did not observe defendant on the day of the shooting.

¶ 10 Chicago police officer Nora Gunning Tellez testified that around 2:30 a.m. on the day in question, she and her partner were driving in the area of Roosevelt Road and West Washburne Avenue when Tellez heard what sounded like firecrackers. Tellez looked in the direction of the sound. About 100 yards away, she observed four men dressed in black, shooting at a group of individuals who were trying to run away. In court, Tellez identified defendant as one of the shooters. Tellez turned on her vehicle's emergency lights. She and her partner drove toward the shooters, and then followed a van that took off from the scene. Eventually the van stopped in an alley. Tellez observed defendant exit the van, but could not recall whether he was still holding a gun.

¶ 11 Chicago police officer Billy Oliveros testified that he and his partner responded to the call of shots fired. During their search for the offenders that were described over the radio, they found clothing on the ground around an apartment complex. Oliveros opened a nearby dumpster and found defendant, whom he identified in court, inside. Oliveros's partner found another man inside a second dumpster. Once defendant was removed from the dumpster, Oliveros placed him

into custody and performed a custodial search, during which he found a loaded gun clip on defendant's person.

¶ 12 Chicago police detective Eugene Schleder testified that he was assigned to investigate the scene of the shooting and the area where the van was stopped. He inspected the van and observed that the steering column was peeled. When shown photographs of the area surrounding the van, Schleder identified a semiautomatic handgun and a handgun with an extended clip. At the scene of the shooting, he observed a pistol, "a lot" of clothing, and numerous shell casings on the ground. There was a vehicle that had crashed into a tree that had front end damage. It also had bullet holes and what looked like blood inside. A total of four firearms were recovered from the two crime scenes.

¶ 13 After viewing the crime scenes, Schleder went to the police station, where four suspects were being held in custody. There, he talked with Mollison and Johnson and conducted separate lineups with each of them. Both Mollison and Johnson identified defendant.

¶ 14 Later that evening, Schleder, along with another detective, interviewed defendant after he was given *Miranda* warnings. Defendant told the detectives that he was attempting to shoot "Woogie," whom Schleder later determined was Jones, because the word on the street was that Jones had killed defendant's cousin and the cousin's girlfriend, and defendant could not "let that go." Sometime later, Schleder interviewed defendant again, this time with an assistant State's Attorney, who advised defendant of his rights. Defendant's second interview was reduced to writing, and defendant signed the statement. In court, Schleder related that in the written statement, defendant indicated his cousin, Dennis Prater, along with Prater's fiancée, were shot and killed on June 11, 2011. Defendant heard that Woogie was the shooter and wanted to shoot

him for revenge. On June 15, 2011, he and three friends, at least two of whom were armed, drove around the neighborhood looking for Woogie. When they spotted him, defendant and two of his friends exited the van and immediately started shooting. Defendant stated that he shot at Woogie 10 times. Woogie tried to enter a vehicle, but then ran away. At this point, defendant and his friends returned to the van. Defendant observed police arriving as they sped off. Eventually the van stopped and defendant ran. He hid in a dumpster but was found by the police and arrested within minutes.

¶ 15 At the time of the second interview, Schleder also presented defendant with a photo array in order to determine the identity of Woogie. Defendant selected Jones's picture from the array and wrote under it, "Dis is the boy who shot my cuzzo, Roomor, in the hood. Dennis Prater. And dats why we shot him tonight, 13th Street."

¶ 16 The parties stipulated that if called as a witness, a forensic DNA analyst would have testified that there was insufficient human DNA on three recovered guns to conduct any analysis. An expert in latent fingerprint analysis would have testified that she found no latent fingerprint impressions suitable for comparison on 2 magazines and 38 live cartridges recovered by the police. An expert in trace chemistry would have testified that he examined the gunshot residue collection kit administered to defendant, and determined that defendant may not have discharged a firearm, or if he did, then particles were not deposited, were removed by activity, or were not detected by the testing procedure. An expert in firearms-related evidence would have testified that various cartridge cases recovered by the police were fired from two of the recovered guns. Finally, the parties stipulated that medical records reflected that Jones was diagnosed with a gunshot wound to the leg, Johnson was diagnosed with an abrasion by gunshot to the wrist, and

Mollison was diagnosed with a gunshot wound with an open fracture of multiple sites of phalanx and phalanges of the hand.

¶ 17 Defendant made a motion for a directed finding. The trial court granted the motion with regard to all counts involving Kirby as a victim, the two counts of armed violence, the two counts of possession of a stolen motor vehicle, and the count of AUUW that was premised on defendant not having been issued a currently valid Firearms Owners' Identification card. With regard to all remaining counts, the motion was denied.

¶ 18 Chicago police detective James Decicco testified for defendant that he interviewed Johnson and Mollison at the hospital on the day of the shooting. Neither told Decicco that defendant "was one of the shooters." On cross-examination, Decicco testified that he did not ask either Johnson or Mollison for a description of any of the offenders.

¶ 19 Defendant testified that he did not shoot Jones, Johnson, or Mollison. He further testified that he had reviewed his written statement, and had read through it with defense counsel, but that "due to my lack of reading," defense counsel had to help him "get through a lot of it." Defendant asserted that he did not say the things that were contained within the statement. When asked if he signed each of the statement's pages, defendant answered, "That is not my signature, sir." Defendant also denied signing any of the photographs that were admitted into evidence as exhibits.

¶ 20 On cross-examination, defendant acknowledged being arrested on the day in question, but denied having been found by the police in a dumpster. Instead, defendant testified that he and some friends were in a school playground across the street from the apartment complex, "kicking it" with some women, when the police arrived. After the police searched the apartment complex,

they came over to the playground, grabbed defendant, and handcuffed him. The police then placed him in a squad car and showed him to two female officers, who said, "[Y]eah, that's him." Defendant explained that Dennis Prater was his brother, not his cousin. He agreed that Prater was killed shortly before the day in question, and testified that he was upset by Prater's death, but insisted he never intended to shoot someone as a result. Defendant testified that he knew Jones by the nickname "Wooga," and that he knew Johnson and Mollison from the neighborhood.

¶ 21 On further cross-examination, defendant testified that he had been "labeled as mentally handicapped," and reiterated that because of his "lack of reading," defense counsel had to read the written statement to him. He explained that when the assistant State's Attorney tried to give him paper and a pen to write a statement, he pushed them back at her and said, "Like, I don't know how to read, write, and spell, and I don't know nothing about this crime you're trying to ask me about. I can't tell you about nothing I don't know nothing about." According to defendant, the assistant State's Attorney responded, "[Y]ou ain't got to say nothing. I have all the evidence I need. I'm going to have a statement from your black ass anyway. See you in court." She also told him she would try to have him charged with first degree murder of two police officers as well. Defendant asserted that he was not present when the statement was written and that the assistant State's Attorney never advised him of his rights.

¶ 22 In rebuttal, the assistant State's Attorney testified that she spoke with defendant in an interview room at the police station on June 15, 2011. After she advised defendant of his *Miranda* rights, he told her about the shooting. She then memorialized defendant's statement in his presence. As they reviewed the statement together, defendant indicated changes to be made

and signed each page. He also signed photographic exhibits. The assistant State's Attorney denied having pushed a pen and paper toward defendant while directing him to write a statement. She also denied telling him she was going to have a statement from his "black ass anyway," that she would see him in court, or that she would try to have him charged with murdering two police officers.

¶ 23 Following closing arguments, the State nol-prossed the remaining count of AUUW. Thereafter, the trial court acquitted defendant of all charges of attempted first degree murder, and found defendant guilty on four counts of aggravated battery with a firearm, each of which named a different victim.[2] Defendant's motion for a new trial was denied.

¶ 24 At sentencing, the trial court noted it had amended the presentence investigation (PSI) report to accurately reflect the crime of which defendant had been convicted. The court asked the parties whether any other changes needed to be made to the PSI report. Both the prosecutor and defense counsel answered there were not.

¶ 25 The State reviewed the facts of the case, argued that defendant had inflicted great bodily harm to Kirby, and urged the court to impose a "significant" sentence based on the nature of the offense. In mitigation, defense counsel pointed out that defendant was 33 years old and had no felony convictions. Counsel also highlighted that defendant grew up in difficult circumstances, in public housing, as one of 13 children; that he had always maintained employment; that he had graduated from high school; and that members of his family were present in court and had been

[2] Specifically, the trial court stated, "As to counts 17, 18, 19, 20, aggravated battery with a firearm, it's a finding of guilty." The mittimus also reflects convictions on these four counts. However, we note that the trial court had earlier granted defendant's motion for a directed finding on "all the counts involving Tequilla Kirby," which would have included count 17, as that count alleged defendant had caused injury to Kirby by shooting her about the body.

supporting him through the six years the case was pending. In allocution, defendant thanked the trial court "for judging righteously," but maintained his innocence. Defendant also stated that he wanted to "get back out there" because he had children, including two sets of twins he had never had the chance to touch because they were born while he was incarcerated.

¶ 26 The trial court indicated that he had considered the factors in aggravation and mitigation, including the nature of the offense and defendant's minimal criminal background. The court then imposed concurrent sentences of 12 years in prison on each count of aggravated battery with a firearm. Defendant's motion to reconsider sentence was denied.

¶ 27 On appeal, defendant contends that his 12-year sentence is excessive. He argues that strong mitigating evidence of rehabilitative potential, along with a lack of aggravation, supported imposing the minimum sentence of six years. Specifically, he argues that the only aggravation presented was the facts of the case, noting "the fact that a shooting occurred is inherent in the offense." With regard to mitigation, defendant asserts that up until the shooting at issue, he had lived a productive and law-abiding life, finished high school and attended college despite socioeconomic and educational difficulties, and worked consistently–sometimes at multiple jobs at a time–to support his family. He argues that absent additional aggravating factors or an explanation from the court about how it balanced the applicable factors and evidence, there is no rational explanation for a sentence "twice the minimum" for a first-time offender. Defendant maintains that because his sentence does not reflect his rehabilitative potential or consideration of the constitutional directive of returning offenders to useful citizenship, this court should reduce the sentence or vacate it and remand for resentencing.

¶ 28 Sentencing decisions are entitled to great deference on appeal because the trial court is in a superior position to fashion an appropriate sentence based on firsthand consideration of the relevant sentencing factors, including the defendant's credibility, demeanor, moral character, mentality, social environment, habits, and age. *People v. Fern*, 189 Ill. 2d 48, 53 (1999). A sentencing determination will not be disturbed absent an abuse of discretion. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007). Sentences that fall within the permissible statutory range may be deemed to be the result of an abuse of discretion only where they are "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 29 Here, the record indicates that the trial court was well aware of the mitigating factors identified by defendant on appeal. With the exception of defendant's "educational difficulties," the existence of which only came out during defendant's trial testimony, all these mitigating factors were included in the PSI report and highlighted by defense counsel at the sentencing hearing. Where mitigating evidence has been presented, it is presumed that the trial court considered it. *People v. Sven*, 365 Ill. App. 3d 226, 242 (2006).

¶ 30 We disagree with defendant's insinuation that the trial court improperly considered as aggravating a factor that was inherent in the offense, *i.e.*, his use of a firearm. Having reviewed the record, it is clear that the trial court merely took into account the nature and facts of the case, which were that defendant shot multiple times into a vehicle occupied by four people, two of them minors. This was entirely proper, as the most important factor a court considers when fashioning a sentence is the seriousness of the offense. See *People v. Evans*, 373 Ill. App. 3d 948, 968 (2007).

¶ 31 We also reject defendant's suggestion that the trial court should have explained how it balanced the applicable factors and evidence when it announced the sentence. This court has repeatedly found that a trial court is not required to explain its reasons for imposing a particular sentence. See, *e.g., People v. Barnes*, 2017 IL App (1st) 143902, ¶ 95 ("a trial court is not required to specify on the record the reasons for the sentence imposed"); *People v. Wilson*, 2016 IL App (1st) 141063, ¶ 11 (a trial court "has no obligation to recite and assign a value to each factor" it considers); *People v. Gordon*, 2016 IL App (1st) 134004, ¶ 51 ("[t]he trial court is not required to detail precisely for the record the exact process by which it determined the penalty").

¶ 32 Aggravated battery with a firearm is a Class X offense. 720 ILCS 5/12-3.05(e)(1), (h) (West 2016). Here, the trial court sentenced defendant to 12 years in prison, a term well within the permissible Class X sentencing range of 6 to 30 years. 730 ILCS 5/5-4.5-25(a) (West 2016). Given the facts of this case, the interests of society, and the trial court's stated consideration of the mitigating and aggravating factors, we cannot find that defendant's sentence is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Stacey*, 193 Ill. 2d at 210. Accordingly, we find no abuse of discretion.

¶ 33 For the reasons explained above, we affirm the judgment of the circuit court.

¶ 34 Affirmed.