2019 IL App (4th) 170200-U

NO. 4-17-0200

FILED
July 5, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
DONTRAIL M. WRIGHT,	)	No. 16CF688
Defendant-Appellant.	)	
	)	Honorable
	)	Heidi N. Ladd,
	)	Judge Presiding.

PRESIDING JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, upholding defendant's conviction and sentence for unlawful possession of a weapon by a felon where (1) the State proved defendant guilty beyond a reasonable doubt; (2) police had probable cause to arrest defendant; and (3) the trial court did not err in imposing a 13-year sentence.

¶ 2 Following a January 2017 trial, a jury found defendant, Dontrail M. Wright, guilty of one count of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2014)). In March 2017, the trial court sentenced defendant to 13 years' imprisonment.

¶ 3 Defendant appeals, arguing (1) the State failed to prove him guilty of unlawful possession of a weapon by a felon beyond a reasonable doubt; (2) police lacked probable cause to arrest him and thus, his trial counsel's failure to include his identity and criminal history in his motion to suppress evidence constituted ineffective assistance of counsel; and (3) the trial court erred by imposing an excessive sentence of 13 years' imprisonment. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In May 2016, the State charged defendant by information with unlawful possession with intent to deliver a controlled substance (720 ILCS 570/401(c)(1) (West 2014)) (count V), manufacture or delivery of controlled substances (720 ILCS 570/401(c)(2) (West 2014)) (count IV), and three counts of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2014)) (counts I,II, and III). Prior to trial, the State dismissed count IV.

¶ 6 A. Defendant's Motion to Suppress Evidence

¶ 7 In November 2016, defendant filed a motion to suppress evidence asserting police officers with the Champaign Police Department lacked probable cause to arrest him. Defendant sought to suppress the three firearms recovered by the police.

¶ 8 During the hearing on his motion to suppress, defendant testified that on May 17, 2016, at 614 West Beardsley Avenue in Champaign, Illinois, he exited the residence with four other men after being at a party. Defendant testified that as he walked into the backyard of the residence, he saw men in plain clothes carrying guns. Upon seeing the men with guns, defendant ran through backyards and jumped over fences. Defendant testified he was unaware the men were police officers.

¶ 9 Champaign Police Officer Cully Schweska testified that on May 17, 2016, he conducted surveillance near 614 West Beardsley and had an arrest warrant for Juvon Mays. At 11 a.m., Schweska observed five men exit the residence at 614 West Beardsley in a single file line, looking to the left and right before he lost sight of them. Schweska then saw two men, defendant and Shoen Russell, stick their heads out from behind a garage in the rear of 612 West Beardsley before they began to flee. Schweska exited his vehicle and walked toward the men.

Schweska testified he was in "[p]lain clothes with an external vest carrier that showed police markings."

¶ 10 Upon confronting defendant and Russell, Schweska drew his firearm and yelled, "Stop. Police. Get on the ground[,]" but both men continued to flee. Schweska testified he "observed [defendant] manipulate—manipulating his waistline." Russell tripped over a fence and police arrested him. Defendant continued to flee but police eventually arrested him. Schweska testified that police found a Phoenix Arms .22-caliber pistol in defendant's "flight path."

¶ 11 After the trial court heard all the evidence, the court denied defendant's motion to suppress finding sufficient evidence to warrant the stop and establish probable cause to arrest defendant. In ruling, the trial judge stated as follows:

> "It's a totality of the circumstances evaluation. I believe there was certainly enough to justify a reasonable stop under—a reasonable suspicion under *Terry* analysis, and a factor that's added in, when you then have the defendant's physical response exiting the residence, looking around, then moving towards the back of the residence and then fleeing after he saw the officer, that in and of itself I believe would justify a *Terry* stop. But there's more because after the defendant started running, the police officer identified himself, ordered the defendant to stop and get on the ground and did so with a gun drawn. At that point I believe it's clear that there was a probable cause that was established from those circumstances, and that was only enhanced by the fact that

the defendant was manipulating his waistband as he ran, which would again add to the circumstances and the reasonable justifiable suspicion."

¶ 12 B. Defendant's Jury Trial

¶ 13 Below, we summarize the relevant testimony elicited during defendant's January 2017 jury trial.

¶ 14 1. *David Griffet*

¶ 15 On May 17, 2016, David Griffet, a Champaign police detective, conducted surveillance of a residence at 614 West Beardsley as part of an unrelated investigation. At 11 a.m., Griffet observed the side door of the residence at 614 West Beardsley open and five men exit the residence at the same time. Griffet testified the men all came out of the residence lined up against the residence looking back and forth rather suspiciously. Griffet observed the men walk toward the backyard and then further east toward the back of 612 West Beardsley.

¶ 16 2. *Daniel Junker*

¶ 17 Daniel Junker, an Illinois Department of Corrections (IDOC) apprehension agent, testified that on May 17, 2016, he conducted surveillance of 614 West Beardsley with Griffet—specifically, to look for Javon Mays. Junker testified that after the men exited the residence, they went toward the backyard of 612 or 610 West Beardsley where he observed the men crouched down behind a garage. Upon approaching the five men, Junker testified another police officer yelled "police" and all five men fled. Junker took Mays into custody near the garage almost immediately. Junker found two firearms behind 610 West Beardsley by the garage where the men were initially crouched down, a .45-caliber National Match pistol and a .22-caliber Colt pistol. Junker testified he wore a bulletproof vest with police markings on it.

¶ 18 3. *Schweska*

¶ 19 Schweska testified that on May 17, 2016, he conducted surveillance of 614 West Beardsley. At 11 a.m., Schweska observed five men exit the residence at 614 West Beardsley in a single file line, looking to the left and right before he lost sight of them. Schweska then saw two men, defendant and Russell, stick their heads out from behind a garage in the rear of 612 West Beardsley. Upon police confronting the men, defendant and Russell took off running to the east through backyards and jumped over fences. Schweska exited his vehicle and walked toward Russell and defendant. Schweska testified he was in plain clothes with an external vest carrier with clear police markings and his badge showing.

¶ 20 Upon confronting defendant and Russell, Schweska drew his firearm and yelled, "[S]top, police, get on the ground[,]" but both men continued to flee. Schweska testified he witnessed defendant "manipulating his front waistband area with both hands" between 608 and 606 West Beardsley and he continued to do so until Schweska lost sight of defendant for about 15 seconds behind 604 West Beardsley.

¶ 21 Schweska ran parallel to defendant and Russell until he cut through the backyards between 606 and 604 West Beardsley. Russell tripped over a fence behind 604 West Beardsley and police arrested him. According to Schweska, he never saw Russell do anything with his hands or throw anything when he fell. Schweska continued east after defendant until defendant ran to the front of 514 West Beardsley where police arrested him. Schweska did not observe defendant do anything with his hands upon arrest. At the time police arrested defendant, they were unaware that other officers already arrested the target of the surveillance, Mays.

¶ 22 After police arrested defendant, Schweska observed a Phoenix Arms .22-caliber pistol in defendant's "flight path." Schweska found the firearm—in the back of 604 West

Beardsley next to foliage by a patio—12 to 15 feet to the east of where police arrested Russell. According to Schweska, Russell never made it to the location of the firearm. Schweska testified that despite periodic drizzle earlier in the morning, he found no drops of rain on the firearm.

¶ 23 4. *Tyron Griffin*

¶ 24 Tyron Griffin testified that on May 17, 2016, he arrived at 614 West Beardsley Avenue around 2 or 3 a.m. to play cards and video games, and drink alcohol. Griffin testified that when he arrived at the residence, defendant and Russell were already there but that Mays and another male arrived later. Griffin stated he stayed in the main area of the residence and he carried two guns on him in his waistband.

¶ 25 Griffin testified that at around 11 a.m., he looked out the window and saw the police. He then announced to everyone that the police were outside, and the five men left the residence. Griffin testified he hid the two guns he possessed outside by the garage when everyone started to run. Griffin testified defendant did not have access to his two guns. Police arrested Griffin in the front of 614 West Beardsley near Mays.

¶ 26 Griffin testified his two firearms were the firearms found behind 610 West Beardsley. Griffin pled guilty to possession of only one of the guns as part of his plea agreement.

¶ 27 5. *Stipulations*

¶ 28 Matthew Henson, a sergeant with the Champaign Police Department, encountered a parked vehicle in the backyard of 608 West Beardsley Avenue. Underneath the vehicle, Henson located a bag containing smaller bags of narcotics. In one of the bedrooms in the residence at 614 West Beardsley, Griffet found on a wooden piece of furniture: digital scales, a white powdery residue, and defendant's identification card. The parties stipulated that the drugs

found underneath the vehicle weighed 3.6 grams and the drugs found in the bedroom weighed 1.09 grams; both controlled substances tested as heroin.

¶ 29 Patrick Funkhouser, a Champaign police officer, photographed and collected the three firearms found. Funkhouser swabbed the firearms for deoxyribonucleic acid (DNA) and sent them to the evidence department at the Champaign Police Department. The parties stipulated that none of the firearms contained defendant's DNA or any latent fingerprints suitable for comparison.

¶ 30 The parties also stipulated that defendant "was previously convicted of a prior qualifying felony offense under the Unlawful Possession of a Weapon by a felon statute." Defendant's prior forcible felony conviction was for home invasion (Champaign County case No. 10-CF-468).

¶ 31 6. *Jury Verdict*

¶ 32 At the close of trial, the jury found defendant guilty of one count of unlawful possession of a weapon by a felon for possessing the .22-caliber Phoenix Arms pistol. The jury found defendant not guilty of possession with intent to deliver a controlled substance and the two counts of unlawful possession of a weapon by a felon relating to the .45-caliber National Match pistol and the .22-caliber Colt pistol.

¶ 33 C. Sentencing Hearing

¶ 34 During sentencing, the State requested the maximum sentence of 14 years' imprisonment based on defendant's criminal history. Defendant's criminal history included multiple offenses dating back to 1998. The State argued that defendant would "never be a contributing member of society[,]" where he was a 32-year-old father to six children and relied

on his mother to pay all of his living expenses and bills, failed to finish high school, and lacked an employment history.

¶ 35 Defense counsel argued the minimum sentence of three years' imprisonment was more in line with the crime defendant committed in this case. Specifically, defense counsel asserted that defendant was entitled to the minimum sentence where in the present case there existed no indication defendant planned to use the gun for a criminal enterprise.

¶ 36 After admonishing defendant about his right to appeal, the trial court stated it "considered all relevant statutory factors, including, but not limited to, the nature and circumstances of the offense, the evidence and applicable factors in aggravation and mitigation, the character, history and rehabilitative potential of the [d]efendant[,] and the arguments and recommendations of counsel." The court then detailed defendant's "substantial criminal record" and noted his lack of contribution to the community besides "a steady stream of crimes."

¶ 37 In reaching its decision, the trial court stated, "In light of the past violence and the fact that this is a gentleman who has—was on parole from home invasion at the time that he ran with a loaded gun, there certainly is a very real and compelling issue here, as well as the protection of the community, and this is an untenable risk to the community to have individuals doing that." Subsequently, the court sentenced defendant to 13 years' imprisonment followed by a 2-year period of mandatory supervised release.

¶ 38 This appeal followed.

¶ 39 II. ANALYSIS

¶ 40 On appeal, defendant argues (1) the State failed to prove him guilty of unlawful possession of a weapon by a felon beyond a reasonable doubt; (2) police lacked probable cause to arrest him and thus, his trial counsel's failure to include his identity and criminal history in his

motion to suppress constituted ineffective assistance of counsel; and (3) the trial court erred by imposing an excessive sentence of 13 years' imprisonment. We turn first to the sufficiency of the evidence.

¶ 41 A. Sufficiency of the Evidence

¶ 42 When considering a challenge to the sufficiency of the evidence, we must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the required elements of the crime beyond a reasonable doubt. *People v. Bradford*, 2016 IL 118674, ¶ 12, 50 N.E.3d 1112. "It is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts." *Id.* It is not our function to retry the defendant. *People v. Givens*, 237 Ill. 2d 311, 334, 934 N.E.2d 470, 484 (2010). We reverse a conviction only where the evidence is so unreasonable, improbable, or unsatisfactory that it raises a reasonable doubt of the defendant's guilt. *People v. Belknap*, 2014 IL 117094, ¶ 67, 23 N.E.3d 325.

¶ 43 To prove a defendant guilty of unlawful possession of a weapon by a felon (720 ILCS 5/24-1.1(a) (West 2014)), the State must present evidence to establish beyond a reasonable doubt that (1) defendant has a prior felony conviction and (2) the defendant knowingly possessed a weapon. 720 ILCS 5/24-1.1(a) (West 2014). We note, in this matter, defendant offers no challenge to the State's proof of his prior felony conviction or the knowledge component of his alleged possession. Thus, we turn to whether defendant actually or constructively possessed the firearm.

¶ 44 "Possession may be established by evidence of actual physical possession ***." *People v. Alexander*, 202 Ill. App. 3d 20, 24, 559 N.E.2d 567, 569 (1990). To prove actual possession, testimony must show that the defendant exercised physical dominion over the item in

question. *Id.* When one attempts to conceal or throw away an item this constitutes an exercise of physical dominion. *Id*. Moreover, possession may be inferred from circumstantial evidence. *People v. Peete*, 318 Ill. App. 3d 961, 965, 743 N.E.2d 689, 692 (2001). In fact, "a conviction may be sustained wholly upon circumstantial evidence ***." *Id*.

¶ 45 Here, we find adequate circumstantial evidence to establish defendant's actual possession of the .22-caliber Phoenix Arms pistol. The testimony reveals that defendant and four other men exited the residence at 614 West Beardsley in a suspicious manner—walking single file next to the residence, looking back and forth—where they went to the back of the house and hid behind a garage. Griffin testified that while the men were still in the residence, he announced that police were outside and that prompted the five men to leave the residence.

¶ 46 Once outside behind the garage, defendant fled when one of the officers announced "police." Junker and Schweska both testified the officers wore bulletproof vests with visible police markings. Defendant and Russell ran eastward through backyards and jumped over fences. Both men continued to flee after Schweska confronted them, drew his firearm, and yelled, "[S]top, police, get on the ground." Schweska testified he witnessed defendant "manipulating his front waistband area with both hands" between 608 and 606 West Beardsley and he continued to do so until Schweska lost sight of defendant for about 15 seconds behind 604 West Beardsley.

¶ 47 Russell tripped over a fence behind 604 West Beardsley, and police arrested him. According to Schweska, at no time did Russell do anything with his hands or throw anything when he fell. Schweska continued east after defendant until defendant ran to the front of 514 West Beardsley, where police arrested him. Schweska did not witness defendant do anything

with his hands upon arrest. After police arrested defendant, Schweska observed a Phoenix Arms .22-caliber pistol in defendant's "flight path."

¶ 48 Schweska found the firearm 12 to 15 feet to the east of where police arrested Russell behind 604 West Beardsley. Tellingly, Russell's flight path never made it to the location of the firearm. Defendant's flight path, however, went further east than Russell's flight path. While no physical evidence connected defendant to the firearm, Schweska testified that despite periodic drizzle earlier in the morning, he found the firearm free of raindrops. Moreover, it seems contrary to reasonable human behavior that an occupant of 604 West Beardsley would store a loaded firearm in their backyard, next to foliage by their patio.

¶ 49 Our case is analogous to *Peete*, 318 Ill. App. 3d at 965-66, where the defendant fled upon police ordering the defendant to stop. During the pursuit, police saw the defendant reach for his waistband but police lost sight of the defendant as he turned a corner. *Id.* at 965. Ultimately, police arrested the defendant and later found a firearm behind hedges by a residence near the defendant's flight path. *Id.* The occupants of the residence told police the firearm had not been there earlier in the day. *Id.* at 965-66.

¶ 50 Defendant argues actual possession fails to apply here because defendant did not actually possess the firearm. Specifically, defendant relies on *People v. Howard*, 29 Ill. App. 3d 387, 389, 330 N.E.2d 262, 264 (1975), to argue that actual possession applies only where a defendant is *seen* throwing an item away and here no one witnessed defendant discard the firearm. Therefore, defendant argues constructive possession applies. See *People v. Sams*, 2013 IL App (1st) 121431, ¶ 10, 2 N.E.3d 441 (Constructive possession of a firearm exists when the State proves that the defendant had both knowledge of its presence and immediate and exclusive control over the area where it was found.).

¶ 51 We reject defendant's interpretation of *Howard* and find actual possession need only be proven by testimony showing defendant exercised physical dominion over the unlawful weapon. Actual possession may be inferred by circumstantial evidence. See *Peete*, 318 Ill. App. 3d at 965-66. Therefore, the State correctly applied and established actual possession. We can reasonably infer that defendant possessed physical dominion over the firearm where the circumstantial evidence suggests that he discarded the firearm when he manipulated the waist of his pants while running through the backyards of 608 and 606 West Beardsley into 604 West Beardsley where police lost sight of him. Police later found the firearm in defendant's flight path where police lost sight of defendant and observed the firearm lacked condensation from the rain earlier in the morning. Given the State proved actual possession, we need not reach the issue of whether the State proved constructive possession.

¶ 52 When viewing all the evidence in the light most favorable to the State, we find the State proved defendant guilty of unlawful possession of a weapon by a felon beyond a reasonable doubt.

¶ 53 B. Motion to Suppress

¶ 54 Defendant next argues police arrested him without probable cause in violation of both the Federal and Illinois constitutions (U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6). According to defendant, his trial counsel was ineffective for failing to include his identity and criminal history in his motion to suppress evidence because such information was the fruit of an illegal arrest. In order to reverse a ruling on a motion to suppress evidence, we must find the ruling lacks a substantial basis and is manifestly erroneous. *People v. Wilson*, 260 Ill. App. 3d 364, 369, 632 N.E.2d 114, 118 (1994). Therefore, we first determine whether police had probable cause to arrest defendant.

¶ 55 The United States and Illinois constitutions protect a person's right to be free from unreasonable searches and seizures. U.S. Const., amend. IV; Ill. Const. 1970, art. I, § 6. "It is well settled that not every encounter between the police and a private citizen results in a seizure." *People v. Luedemann*, 222 Ill. 2d 530, 544, 857 N.E.2d 187, 196 (2006). "Courts have divided police-citizen encounters into three tiers: (1) arrests, which must be supported by probable cause; (2) brief investigative detentions, or '*Terry* stops,' which must be supported by a reasonable, articulate suspicion of criminal activity; and (3) encounters that involve no coercion or detention and thus do not implicate fourth amendment interests." *Id.* (citing *United States v. Black*, 675 F.2d 129, 133 (7th Cir. 1982); *United States v. Berry*, 670 F.2d 583, 591 (5th Cir. 1982)).

¶ 56 "Probable cause is a fluid concept that turns on the assessment of probabilities in particular factual contexts; it is not readily, or usefully, reduced to a neat set of legal rules." *People v. Jones*, 215 Ill. 2d 261, 274, 830 N.E.2d 541, 551 (2005). "A court must examine the events leading up to the search or seizure, and then decide whether these historical facts, viewed from the standpoint of an objectively reasonable law enforcement officer, amount to probable cause." *Id.* "Generally, a police officer has probable cause to arrest an individual when the totality of the facts and circumstances within his knowledge would justify the belief, in a person of reasonable caution, that the person arrested has committed an offense." *People v. Jones*, 196 Ill. App. 3d 937, 954, 554 N.E.2d 516, 526 (1990).

¶ 57 Here, defendant argues police lacked probable cause to arrest him where his arrest stemmed from (1) defendant being with Mays, the target of the arrest warrant and surveillance, (2) defendant fleeing the police, and (3) defendant manipulating his front waistband as he fled police. We disagree with defendant. Based on the totality of the circumstances, we find probable cause existed to arrest defendant.

¶ 58 Police viewed defendant along with four others, including Mays, exit 614 West Beardsley in a rather suspicious manner—in a single file line, looking both directions. The men proceeded to the back of the house and crouched down behind a garage. Then, the men fled when an officer announced, "[P]olice." Defendant sprinted eastbound through backyards and jumped over fences.

¶ 59 Based on this evidence, police could reasonably suspect criminal activity at this point and the police order for defendant to stop was an authorized act. See 725 ILCS 5/107-14 (West 2014) (A peace officer "may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit[,] or has committed an offense ***."); see also *People v. Holdman*, 73 Ill. 2d 213, 221, 383 N.E.2d 155, 158 (1978) ("The flight immediately following the officers' shining of the light was a strong indication there was criminal activity afoot, and, in our judgment, required police pursuit."). While defendant argues flight alone is not sufficient to establish reasonable suspicion the person has committed a crime (*In re D.L.*, 2017 IL App (1st) 171764, ¶ 28, __ N.E.3d __), we find defendant's suspicious behavior coupled with his flight after police announced themselves is enough for police to conduct an authorized *Terry* stop. See *id.* ("It is only when that flight is coupled with other factors that it may support reasonable suspicion justifying a *Terry* stop."). Furthermore, this is not the end of the inquiry because defendant continued to run from police.

¶ 60 Schweska, a pursuing officer, testified he wore plain clothes with an external vest carrier with clear police markings and his badge showing. Schweska, upon confronting defendant running through backyards, drew his firearm and yelled, "[S]top, police, get on the ground[,]" but defendant continued to flee. Schweska testified he witnessed defendant

"manipulating his front waistband area with both hands" between 608 and 606 West Beardsley and continued to do so until Schweska lost sight of defendant for about 15 seconds behind 604 West Beardsley.

¶ 61 At this point, police had probable cause to arrest defendant for the offense of resisting or obstructing a peace officer after defendant disobeyed orders to stop fleeing by a police officer who commanded him to stop. See 720 ILCS 5/31-1(a) (West 2014) ("A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer *** of any authorized act within his or her official capacity commits a Class A misdemeanor."); see also *Holdman*, 73 Ill. 2d at 222 ("[T]he arrests were proper based on the defendants' attempt to elude the police in violation of our statute prohibiting restricting or obstructing a police officer ***.").

¶ 62 Based on the evidence presented, it is obvious defendant knew he was being pursued by police. We believe defendant's arrest was justified based upon the circumstances surrounding his violation of the resisting-or-obstructing-a-peace-officer statute. While the State never formally charged defendant with resisting or obstructing a peace officer, we find based on the totality of the circumstances that police established probable cause to arrest defendant. Therefore, our decision renders it unnecessary to address defendant's claim that his identity and criminal history required suppression or that his trial counsel provided ineffective assistance by failing to seek suppression of his identity and criminal history.

¶ 63 C. Excessive Sentence

¶ 64 Defendant finally argues the trial court erred by imposing an excessive sentence of 13 years' imprisonment for his conviction of one count of unlawful possession of a weapon by a felon.

¶ 65 The trial court has discretion in sentencing and we will not reverse a sentence absent an abuse of that discretion. *People v. Snyder*, 2011 IL 111382, ¶ 36, 959 N.E.2d 656. Such discretion in sentencing is necessary because "the trial court is in a better position to judge the credibility of the witnesses and the weight of the evidence at the sentencing hearing ***." *People v. Ramos*, 353 Ill. App. 3d 133, 137, 817 N.E.2d 1110, 1115 (2004).

¶ 66 Defendant forfeited his claim that his 13-year prison sentence is excessive where he failed to file a motion to reconsider the sentence. See 730 ILCS 5/5-4.5-50(d) (West 2014) ("A defendant's challenge to the correctness of a sentence or to any aspect of the sentencing hearing shall be made by a written motion filed with the [trial court] clerk within 30 days following the imposition of sentence."). Where a defendant fails to file a motion to reconsider his sentence to preserve sentencing issues on appeal, the court's sentencing decision will only be overturned if the defendant demonstrates plain error. *People v. Moreira*, 378 Ill. App. 3d 120, 131, 880 N.E.2d 263, 272 (2007).

¶ 67 Under the plain-error doctrine, we first determine whether a clear or obvious error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007). If the reviewing court determines a clear or obvious error occurred, the second step is to determine whether (1) "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) the "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." *Id.* Thus, we turn to whether the court abused its discretion by committing a clear or obvious error in sentencing defendant to a 13-year term of imprisonment.

¶ 68 The trial court errs where the sentence is "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, 737 N.E.2d 626, 629 (2000). As the court determines an appropriate sentence, "a defendant's history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed." *People v. Hernandez*, 319 Ill. App. 3d 520, 529, 745 N.E.2d 673, 681 (2001).

¶ 69 In determining defendant's sentence, the trial court "considered all relevant statutory factors, including, but not limited to, the nature and circumstances of the offense, the evidence and applicable factors in aggravation and mitigation, the character, history, and rehabilitative potential of the [d]efendant and the arguments and recommendations of counsel." The court detailed defendant's substantial criminal record, noting multiple offenses dating back to 1998. The court went on to point out that the record showed defendant is a 32-year-old father of six children and relied on his mother to pay all of his living expenses and bills. He failed to complete high school or list any employment history. However, he maintains he exhibits good mental and physical health. Finally, the trial court concluded, "[T]he only thing he's contributed to society at this point is a steady stream of crimes."

¶ 70 Defendant however asserts the most important factors to consider in fashioning an appropriate sentence are the seriousness of the crime and the degree of harm caused by the defendant. See *People v. Saldivar*, 113 Ill. 2d 256, 269, 497 N.E.2d 1138, 1143 (1986); *People v. Busse*, 2016 IL App (1st) 142941, ¶ 28, 69 N.E.3d 425. Thus, defendant argues he is entitled to no more than the minimum sentence of three years' imprisonment because he posed little to no danger to society and the nature of his offense was nonviolent. We disagree with defendant and

find that running through backyards with a loaded firearm poses a danger to society. While no one suffered harm during the offense, the risk certainly existed.

¶ 71 In further support of its decision, the trial court relied on defendant's contribution to the dangers of gun violence and the proliferation of illegal guns in the community. The court cited a compelling need to deter "the wrong people" from "arming themselves." Therefore, given the present crime, defendant's criminal history, his lack of contribution to society, and the need to deter others, we cannot say that the court abused its discretion by sentencing defendant to 13 years' imprisonment in this case. The trial court properly determined that a significant term of imprisonment is "necessary for the protection of the public." Accordingly, defendant fails to demonstrate a clear or obvious error to support his contention of plain error.

¶ 72 III. CONCLUSION

¶ 73 For the foregoing reasons, we affirm the trial court's judgment.

¶ 74 Affirmed.