

No. 1-12-0868

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 9812
)	
ALKEYYUM DAILEY,)	Honorable
)	Stanley Sacks,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's conviction for aggravated battery with a firearm affirmed where the State's evidence disproved defendant's affirmative defense that he shot the victim in defense of others, and his claim that his 15-year sentence is excessive is forfeited and not reviewable under the plain-error doctrine.

¶ 2 Following a simultaneous bench trial, defendant Alkeyyum Dailey was convicted of aggravated battery with a firearm and sentenced to 15 years' imprisonment; codefendant, Jesse Hatcher, who is not a party to this appeal, was found guilty of battery. On appeal, defendant contends the State failed to prove him guilty beyond a reasonable doubt because it failed to show

he did not act reasonably in defense of his brother and cousin, who were being beaten when defendant fired his gun, and that his sentence is excessive because the trial court failed to give adequate consideration to the circumstances of the offense and his youth.

¶ 3 At trial, Eric Woods testified that in 2010, he was a part-time employee at a private social club called Club Swagger (the club), which was operated in a building located at 620 South Cicero Avenue in Chicago and owned by Eric's half-brother, Harry Biles. Defendant's family rented an apartment located on the second floor of the building and the entrance to the apartment was located near the entrance to the club.

¶ 4 On May 1, 2010, around 12:30 a.m., Mr. Woods parked his vehicle across the street from the club and saw some men standing in front of the club. As Mr. Woods crossed the street, a vehicle made a U-turn in front of the club. Leondre Dailey, defendant's brother, who lived in the upstairs apartment, and defendant's cousin, Prentice Smith exited the vehicle and the vehicle was driven away.

¶ 5 Mr. Woods testified that Mr. Smith approached a man who was standing in front of the club. Mr. Smith accused the man of giving him a nasty look, and began to argue with him. The man from the club apologized, but Mr. Smith did not accept his apology and he and the man became engaged in a heated argument. Mr. Woods told Mr. Smith and the man to "let it be" and "walk it off." Mr. Smith threw a punch at the man he was arguing with, and the man struck Mr. Smith and "got the best of him." Another man from the club punched Leondre. Mr. Woods testified there were two separate fistfights going on, and that Mr. Smith had started the altercation. Mr. Woods stood next to the group of men, repeatedly telling them to stop fighting, and attempted to separate them. Mr. Woods pulled one man off of Leondre. As he tried to keep

the second man and Leondre apart, Mr. Woods was shot in the back and fell to the ground, unable to move.

¶ 6 Mr. Woods testified that he did not see the gunman's face at that time. As he lay on the ground, Mr. Woods saw the gunman run, slide, and fall on the wet pavement with a gun in his hand. Someone then approached Mr. Woods and hit him in the head with the gun about five times. Mr. Woods assumed that the person who shot him was the same person who struck him with a gun. Mr. Woods identified defendant, who also lived in the upstairs apartment, as the person who struck him with the gun. During his testimony, a video recorded by a security camera from the club was played in court. While watching the video, Mr. Woods pointed out where the argument and the fistfight began. The video included a depiction of a woman with a baby telling someone upstairs to come downstairs during the fight. Mr. Woods further noted that the video depicted him trying to separate the two men, then someone coming up from behind him and shooting him in the back. At the trial court's request to view the shooting again, the State replayed the video.

¶ 7 Mr. Wood said he did not strike anyone and did not have a weapon.

¶ 8 When defense counsel questioned Mr. Woods about the two men who were being "beaten up," he responded that the men were "[n]ot actually beaten up, but they [were] fighting."

¶ 9 Harry Biles testified that on May 1, 2010, at about 12:30 a.m., he went outside the club to greet a group of men when his half-brother, Eric Woods, arrived at the club. At the same time, Mr. Biles saw three men, including defendant, exiting a vehicle from across the street. Defendant exchanged words with someone in front of the club, then went upstairs to his apartment with the other two men who exited the vehicle. Moments later, that same vehicle

made a U-turn in front of the club, and Leondre and Mr. Smith exited the vehicle and began arguing with people in front of the club. Mr. Biles saw Mr. Woods attempt to break up the argument, but a man punched Leondre. The argument then escalated into two fistfights, one in front of the club entrance, and one in front of the apartment entrance. Mr. Woods attempted to break up the fight involving Leondre, who was on the ground with at least one person striking him. Mr. Biles could not recall how many people were hitting Leondre, but thought it was probably two men. Mr. Biles then saw defendant run out of the building with a gun in his hand and saw him shoot Mr. Woods in the back. Mr. Biles testified that the only person he saw with a weapon that night was defendant.

¶ 10 Leondre Dailey, testified that on the night of the incident, he was living with his family, including defendant, in an upstairs apartment located at 620 South Cicero Avenue in Chicago. Leondre drove home that night with Mr. Smith, who parked in the alley behind the apartment building. Defendant and codefendant Jesse Hatcher, another brother of defendant's, arrived in a second vehicle. About 15 people from the club were in the alley, and there were several vehicles blocking the alley and occupying the two parking spaces designated for the apartment. Defendant asked the people to move their vehicles, and then Mr. Smith shouted to defendant that they would park in front, and both vehicles drove to the front of the building.

¶ 11 Leondre testified that he saw 15 to 20 people standing in front of the club blocking the door to their apartment. Defendant and Mr. Hatcher exited their vehicle, maneuvered their way through the crowd, and went upstairs to the apartment. Mr. Smith made a U-turn in front of the building, and Mr. Smith and Leondre exited Mr. Smith's vehicle. Mr. Smith asked the club's security guard to have the club members clear the way to the door to their apartment. The

security guard became hostile and, when Mr. Smith asked to speak with Mr. Woods, the security guard began to argue with Mr. Smith. A man from the club wearing a black and white shirt then approached Leondre, who said "I'll pop your a**." The man then reached toward his waist. Leondre testified that he saw the handle of a gun in the man's waistband. At that point, more people exited the club and an unknown man struck Leondre twice in the face. Leondre testified that several people rushed at him and overcame him. He fell to the ground and many people proceeded to stomp on him. Leondre said it felt like more than five people striking blows to his head, back, and ribs. He curled into a ball on the ground and lost consciousness. Leondre did not recall hearing gunshots.

¶ 12 Prentice Smith's testimony was similar to Leondre's testimony regarding their arrival at the building. However, Mr. Smith also stated that two of the men standing in the alley were holding weapons at their sides. He also stated that a group of about 10 people were standing in front of the club and the apartment entrance, and that defendant and Mr. Hatcher maneuvered their way through the crowd to enter the apartment. Mr. Smith then made a U-turn in front of the club, and he and Leondre exited the vehicle in an attempt to locate Mr. Woods, who they believed owned the club.

¶ 13 As Mr. Smith spoke to the security guard, a club member came within inches of his face and loudly told him that he had to move. As others exited the club, the same man asked Mr. Smith if he thought he was tough, and Mr. Smith heard Mr. Woods say "yeah, he think he tough." Another club member then punched Leondre in his jaw, and a group of men swarmed Leondre and Mr. Smith. Mr. Smith testified that about 10 people were punching and stomping on Leondre, who had fallen to the ground. Mr. Smith acknowledged that he punched the man in

front of him, and then two men grabbed Mr. Smith by his hair and swung him around in a circle. A group of 10 men pulled Mr. Smith to the south of the building and, after he fell to the ground, they continued kicking and hitting him in his head, chest, and face. When Mr. Smith heard gunshots, the men let him go, and the entire crowd, including Mr. Smith, left the scene. Mr. Smith did not remain at the scene to report the attacks to police.

¶ 14 Defendant's testimony was substantially similar to that of Leondre's testimony regarding their arrival at the alley, the parking in front of the building, and the entering of the apartment with Mr. Hatcher. However, defendant did not testify to seeing anyone in the alley with a gun. Defendant added that one man he slightly bumped became enraged and made some remarks as defendant passed him when he entered the apartment. Once inside the apartment, defendant went to his room. Minutes later, defendant heard his sister Jenika yelling "they beating Dre, they beating Dre and Prentice, they beating my family." Defendant grabbed his loaded gun from under his mattress, ran outside, and saw a group of men beating Leondre and Mr. Smith. Leondre was lying on the ground in the street being beaten by about 10 people who were kicking, stomping, and striking him with their fists. Defendant acknowledged that he did not see any guns or weapons being used, and the only gun he saw that night was his own. Mr. Smith, who was being beaten by approximately three people, was about three feet away from Leondre.

¶ 15 Defendant testified that he fired two shots into the air in an attempt to break up the melee. Some of the men ran, but some of them continued their beating of Leondre and Mr. Smith. Leondre was not moving and appeared to be unconscious, so defendant fired two additional gunshots, one of which hit Mr. Woods. Defendant was not aware that he had shot someone until after he was arrested. Defendant acknowledged that he saw Mr. Woods collapse after the gun

was fired. Defendant testified that he fired the shots to protect his family and denied that he intentionally fired the gun at Mr. Woods. Defendant explained that he was not shooting at one person in particular but, instead, was shooting at the crowd so they would stop beating up his family. Defendant left the scene and he threw the gun in the alley behind the apartment building. Defendant did not call the police before running outside with the gun.

¶ 16 In closing, defense counsel argued that defendant shot Mr. Woods while he was acting in the defense of his brother and cousin, who were being beaten by a mob, and that he had an actual reasonable subjective belief that danger existed which required him to use deadly force.

¶ 17 The trial court found that: the video of the incident clearly showed there were two men fighting against one man, probably Leondre; Mr. Woods pulled one man off of Leondre; Mr. Woods attempted to pull the second man off Leondre when defendant was "right on top of Eric Woods when he [shot] him" in the back from a distance of one to two feet. The trial court also found that there was no evidence defendant shot at anyone in defense of his brother, and that defendant had "no basis at all" to believe, "reasonable or otherwise," that he was justified in shooting Mr. Woods. The trial court rejected the defense counsel's claim that Leondre and Mr. Smith were being severely beaten by a mob, and noted that if such a beating had occurred, the men would have required medical attention. Accordingly, the trial court found defendant guilty of aggravated battery with a firearm.

¶ 18 The trial court found codefendant was the person who hit Mr. Woods with the gun after he was shot.

¶ 19 At sentencing, the State presented a victim impact statement from Mr. Woods who stated he had been hospitalized for a month, had to learn how to walk again, is dependent on others to help him with everyday tasks, and lives in pain every day.

¶ 20 Defense counsel presented three letters in mitigation, which the trial court reviewed. Defendant then read a statement to the trial court stating that his only intention was to help his brother, and asking the trial court to consider the fact that his conduct was "ill-motivated by the initial aggressors involved in this unfortunate incident." Defendant also apologized for his actions, asked for forgiveness, and suggested establishing a nonprofit organization directed against youth violence. Defense counsel argued that defendant admitted his guilt, acknowledged that he had committed a grave error in judgment and regretted the injury he caused to Mr. Woods.

¶ 21 In aggravation, the State stated that defendant had three prior delinquency findings: possession of cannabis in 2007; criminal trespass to a building in 2008; and reckless discharge of a weapon in 2008 for which he was placed on two years' probation and which terminated satisfactorily three months prior to the shooting in this case. The State also noted the severity of the injury to Mr. Woods, and asked the trial court to impose a lengthy sentence to protect the public.

¶ 22 As to defendant's contention that he was trying to protect his brother, the trial court expressly stated: "I don't believe one single word of that. Not one. Nada. He was mad about something. I don't know what he could have been mad about, but he was mad about something and he took it out on Eric Woods." The trial court stated that *Mr. Woods* was attempting to

protect people, and that he was a mere bystander in the street when defendant came up "right on top of [him]" and shot him.

¶ 23 The trial court reviewed defendant's criminal history, the applicable sentencing range of 6 to 30 years' imprisonment, and the need for it to balance the factors in aggravation and mitigation to determine a reasonable sentence which protects society and punishes defendant for the unwarranted shooting of Mr. Woods. The court further stated defendant "is a young guy, but young [guys] can do bad things too and as far as Eric Woods is concerned, when he gets shot in the back and is left with some residual effects of that shooting even now almost two years later, it doesn't matter much to Eric Woods and society if the guy who shot him was 45 years old as opposed to 17 or 18." The trial court also stated that when young men make bad choices, they have to suffer the consequences. The trial court then sentenced defendant to 15 years' imprisonment.

¶ 24 On appeal, defendant contends the State failed to prove him guilty beyond a reasonable doubt because it failed to show that his actions were unreasonable in defense of his brother and cousin, who were being beaten at the time he fired his gun. Defendant claims that if he had not intervened immediately, it is highly plausible that Leondre and Mr. Smith could have been severely injured or killed.

¶ 25 The State responds that the evidence presented sufficiently negated defendant's claim that he acted in defense of Leondre and Mr. Smith. The State argues there was no unlawful force threatened, no imminent danger of harm, and that the gun was not necessary to avert any danger in the fistfight. The State points out that defendant fled the scene and disposed of the gun.

¶ 26 When a defendant claims there is insufficient evidence to sustain a conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. This standard applies whether the evidence is direct or circumstantial, and this court will not substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). "Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State." *Baskerville*, 2012 IL 111056, ¶ 31. In a bench trial, the trial court is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences therefrom. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We will not reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 27 To prove defendant guilty of aggravated battery with a firearm, the State was required to show that, in committing a battery, defendant knowingly or intentionally caused injury to another person by discharging a firearm. 720 ILCS 5/12-4.2(a)(1) (West 2010). Here, defendant admitted that he shot Mr. Woods, but claimed he did so while defending his brother and cousin.

¶ 28 "A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such

force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony." 720 ILCS 5/7-1(a) (West 2010).

¶ 29 When defendant raises the affirmative defense that he acted in the defense of another, the State must prove beyond a reasonable doubt not only the elements of the offense but, also, that the offense was not carried out in the defense of another, and that defendant's use of force was not legally justified. *People v. Jeffries*, 164 Ill. 2d 104, 127 (1995). To establish his claim of self-defense or the defense of another, defendant must present some evidence of each of the following elements: (1) force was threatened against a person; (2) the person threatened was not the aggressor; (3) there was an imminent danger of harm; (4) the threatened force was unlawful; (5) he actually and subjectively believed a danger existed which required the use of force he applied; and (6) his beliefs were objectively reasonable. *Id.* at 127-28. If the State negates any one of these self-defense elements, defendant's claim that he acted in defense of another, fails. *Id.* at 128.

¶ 30 The evidence in this case showed that Mr. Smith's remarks to one of the men in front of the club started a heated argument that led to fistfights. Mr. Smith threw the first punch. After arming himself with a gun, defendant left his apartment and joined the melee.

¶ 31 Defendant argues that at the time he fired the gun, Leondre and Mr. Smith were being "beaten up" by several men and, specifically, that Leondre was lying on the ground being beaten by a group of 10 men who were kicking, stomping on him, and hitting him. Defendant's assertion, however, was contradicted by the State's evidence.

¶ 32 Mr. Woods testified that Leondre and Mr. Smith were "[n]ot actually beaten up, but they [were] fighting." Mr. Woods' testimony was corroborated by the videotape, which the trial court

found clearly showed that there were two men fighting against one man, probably Leondre, that Mr. Woods pulled one man off of Leondre, which then left Leondre and the other man fighting one-on-one, with Mr. Woods trying to separate them. This court has also viewed the videotape of the incident and we find that the trial court's assessment is completely accurate. At the time of the shooting, Leondre was not lying on the ground being beaten by numerous men. Leondre was actively fighting another man, and Mr. Woods was standing next to them, trying to separate them. At this point defendant came up directly behind Mr. Woods and shot him in the back from a distance of one to two feet. Accordingly, Leondre was not a victim threatened by force, which would have caused death or great bodily harm, nor was he in danger of such imminent harm. Instead, Leondre was actively engaged in a fistfight with another man. Most importantly, the unarmed victim, Mr. Woods, was not fighting with or threatening Leondre or Mr. Smith with harm, but was, instead, acting to separate Leondre and the other man.

¶ 33 The trial court found there was no evidence defendant shot Mr. Woods in defense of his brother and his cousin, and defendant had "no basis at all" to believe, "reasonable or otherwise," that he was justified in shooting Mr. Woods. As the trier of fact, it was the trial court's duty to weigh the evidence and resolve any conflicts therein, and we find no error in the trial court's assessment of the evidence and its finding that defendant's act of shooting Mr. Woods was not in defense of his brother and his cousin.

¶ 34 Defendant next contends that his 15-year sentence is excessive because the trial court failed to give adequate consideration to the circumstances of the offense and his age. Defendant forfeited review of this issue because he failed to make a contemporaneous objection at sentencing and failed to file a postsentencing motion. *People v. Hillier*, 237 Ill. 2d 539, 544

(2010). Defendant argues, however, that this issue is reviewable under both prongs of the plain-error doctrine and, alternatively, that trial counsel rendered ineffective assistance when he failed to file a motion to reconsider defendant's sentence.

¶ 35 The State responds that the plain-error doctrine does not apply where the trial court did not abuse its discretion in sentencing defendant.

¶ 36 The plain-error doctrine is a narrow and limited exception to the forfeiture rule. *Hillier*, 237 Ill. 2d at 545. Under either prong, a defendant must first demonstrate that a clear or obvious error occurred during sentencing before he may obtain relief under this rule. *Id.* Thereafter, defendant must then show that the evidence at the sentencing hearing was closely balanced, or that the error was so egregious that he was denied a fair sentencing hearing. *Id.* The burden of persuasion is on defendant, and if he fails to meet that burden, the procedural default will be honored. *Id.*

¶ 37 As charged in this case, aggravated battery with a firearm is a Class X offense with a statutory sentencing range of 6 to 30 years' imprisonment. 720 ILCS 5/12-4.2(b) (West 2010); 730 ILCS 5/5-4.5-25(a) (West 2010). The trial court has broad discretion in imposing an appropriate sentence and where, as here, that sentence falls within the statutory range, it will not be disturbed on review absent an abuse of discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). An abuse of discretion exists where a sentence is at great variance with the spirit and purpose of the law, or is manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). When the trial court determines that a severe sentence is warranted, defendant's age has little import. *People v. Rivera*, 212 Ill. App. 3d 519, 526 (1991).

¶ 38 Here, we find no error by the trial court in sentencing defendant to a term of 15 years' imprisonment, which falls within the statutory range. In imposing that sentence, the trial court noted that defendant was found delinquent on a prior weapons charge, and that his probation for that offense ended less than three months before the shooting in this case. The trial court also noted the sentencing range, and stated that it had to balance the factors in aggravation and mitigation to determine a reasonable sentence. The record further shows that the trial court considered and rejected defendant's contention that he acted in defense of another and expressly stated that it did not believe "one single word" of defendant's claim that he shot Mr. Woods to protect his brother and his cousin from being beaten. The trial court also gave specific consideration to defendant's young age and stated that when young men make bad choices, they have to suffer the consequences. Thus, we are not persuaded by defendant's claim that the trial court failed to give adequate consideration to these two factors.

¶ 39 This court will not reweigh the sentencing factors or substitute our judgment for that of the trial court (*Alexander*, 239 Ill. 2d at 213) and, based on the record before us, we cannot say that the sentence imposed by the court is excessive, manifestly disproportionate to the nature of the offense, or that it departs significantly from the intent and purpose of the law. *People v. Fern*, 189 Ill. 2d 48, 56 (1999). Since no error occurred, we conclude that the plain-error doctrine does not apply and, thus, defendant has forfeited this issue. *Hillier*, 237 Ill. 2d at 545-46.

¶ 40 In addition, we find no merit in defendant's alternative argument that trial counsel rendered ineffective assistance when he failed to file a motion to reconsider his sentence. To support a claim of ineffective assistance of trial counsel, defendant must demonstrate that counsel's representation was deficient and, as a result, he suffered prejudice. *Strickland v.*

Washington, 466 U.S. 668, 687 (1984); *Givens*, 237 Ill. 2d at 331. Specifically, defendant must show that counsel's performance was objectively unreasonable, and that there is a reasonable probability the outcome of the proceeding would have been different if not for counsel's error. *People v. Henderson*, 2013 IL 114040, ¶ 11. If defendant cannot prove he suffered prejudice, this court need not determine whether counsel's performance was deficient. *Givens*, 237 Ill. 2d at 331. Moreover, *Strickland* requires defendant to demonstrate actual prejudice, and mere speculation as to prejudice is not sufficient. *People v. Bew*, 228 Ill. 2d 122, 135-36 (2008) (and cases cited therein). As stated above, we have found no abuse of discretion by the trial court in imposing the 15-year sentence. Therefore, defendant was not prejudiced by trial counsel's failure to file a motion to reconsider that sentence.

¶ 41 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 42 Affirmed.