No. 1-09-0602

FIFTH DIVISION
May 13, 2011

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. 08 CR 4250
	)	
RALPH KINGS,	)	Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Epstein concurred in the judgment.

O R D E R

HELD: The evidence presented at trial was sufficient to prove defendant guilty beyond a reasonable doubt; the prosecutor's use of the words "we know" during closing argument did not deprive defendant of his right to a fair trial; and defendant's sentence is not excessive.

Following a jury trial, defendant Ralph Kings was convicted of aggravated criminal sexual assault and aggravated kidnapping

and sentenced to consecutive terms of imprisonment of 18 years and 6 years, respectively. On appeal, defendant challenges the sufficiency of the evidence, arguing that the victim's testimony was unconvincing and contrary to human experience. He also contends that the prosecutor's closing argument was improper and deprived him of his right to a fair trial, and that his sentence is excessive. For the reasons that follow, we affirm.

Defendant's conviction arose from the events of September 29, 2005. The State's version of events, in brief, is that defendant and an accomplice grabbed the victim off the street, blindfolded her, and drove her to a house several blocks away. There, on the concrete landing outside the basement door, defendant forced her to have sexual intercourse while his accomplice acted as a lookout. Although the victim was unable to identify defendant, DNA evidence later connected him to the crime. Defendant's version of events, in contrast, is that he and the victim met after school, went to a friend's house, and engaged in consensual sex.

At trial, the victim, E.W., testifed that on the date in question she was a 15-year-old high school freshman. While walking home from the bus stop after marching band practice, she decided to take a shortcut through an alley. E.W. noticed a car coming toward her in the alley. The car passed her and then stopped. E.W. looked back but kept walking. She heard a car

door shut and then, "out of nowhere," felt two people grab her from behind. E.W. could not describe what the people looked like, but testified that they were African-American men who were larger than her.

E.W. testified that the men were rough. One put his hands over her eyes while the other gripped her arm and yelled at her to be quiet and shut up. E.W. tried to scream and yell, but one of the men had his hand over her mouth. She also tried to run but could not get loose. The men pulled her to the car and shoved her into the back seat. There, E.W. was blindfolded with a scarf of some kind. While one of the men drove, the other sat in the back seat with E.W., keeping one hand over her mouth and holding her down with the other.

After a few minutes, the car stopped and E.W. was pulled from the back seat and led down a flight of stairs. E.W. testified that she screamed, but one of the men grabbed her mouth "really hard" and ordered her to be quiet. At the bottom of the stairs, her blindfold was removed. The lighting was dim and there was "kind of like a back porch" overhead. While one of the men stayed at the top of the stairs, acting like a lookout, the other man took his hoodie off, laid it on the ground, and pushed E.W. on top of it. E.W. tried to fight back, but the man held her down on her back, pinned her hands over her head, and pulled down her pants. He pulled his own pants down, put his penis in

her vagina, held one hand over her mouth, and told her to be quiet and shut up.

E.W. testified that after two or three minutes, the lookout said someone was coming. A woman approached the area and asked the men what they were doing. The men ran to the car and drove off. E.W. pulled up her pants and ran. She brushed past the woman and tried not to look at her. E.W. stated that she did not stop and tell the woman what happened because she was in shock, did not know where she was, did not want to talk to anyone, and just wanted to get home. As she ran, she asked a man on a porch for directions to her street. She did not tell the man what had happened because she was scared.

It took E.W. about 10 minutes to get home. Her mother asked her what was wrong, but E.W. was in shock and could not say anything at first. When her mother asked again, E.W. told her that she thought she had just been raped. E.W.'s mother called the police, who came to their house. The police put the clothing she had been wearing into a plastic bag and took E.W. to the hospital, where she was examined by a doctor.

E.W.'s mother testified that when E.W. came home on the day in question, she looked more distraught, more upset, and more uncomfortable than usual. E.W. was usually very cheerful, but that day was very sad, moody, and quiet. When E.W. told her she had just been raped, she called the police.

The emergency room doctor who examined E.W., Andrew Labrador, testified that E.W. told him two men grabbed her from an alley when she was on her way home and drove her to a basement where one of the men forced her to have vaginal intercourse. Dr. Labrador's examination revealed two fresh, small abrasions on E.W.'s right knee, which he opined would be consistent with contact with a cement surface. During the pelvic examination, he also noted a small abrasion at the posterior curvature of the vulva. He stated that the abrasion was a recent injury and that it was consistent with force when being sexually assaulted. Dr. Labrador and a nurse assembled a sexual assault kit that included swabs and other specimens.

Chicago police detective Richard Harrison testified that upon being assigned to E.W.'s case, he went to the hospital where she was being examined. Detective Harrison had a conversation with E.W. and her mother about what had happened. He also had the hospital's sexual assault kit sent to the crime lab for testing and analysis. The next day, Detective Harrison picked up E.W. and her mother and had E.W. retrace her steps and locate the place where she was assaulted. Harrison described the location as a concrete landing at the bottom of the rear basement stairwell of a house.

Several State witnesses testified as to the chain of custody of the sexual assault evidence collection kit and the results of

its testing. As relevant here, E.W.'s vaginal swab tested positive for the presence of semen, and a complete male DNA profile was developed from that sample. The parties stipulated as to the proper collection and chain of custody of a saliva sample taken from defendant. A forensic analyst testified that he conducted a comparison between the DNA profiles generated from the semen sample and defendant's saliva sample and concluded that the profiles matched.

Defendant testified on his own behalf. He testified that after school on the day in question, he went to a nearby gas station that was a "hang out spot" for students. Defendant went inside and bought a pack of cigarettes and a box of cigars. E.W., who was inside with two other girls, asked him for a cigarette. Defendant had "seen her around" before. Defendant gave E.W. a cigarette and then went back outside to hang out and smoke. After a little while, E.W. and her friends joined defendant and his group and talked for about 10 minutes. At that point, E.W.'s friends left, but E.W. told them she was going to stay. When defendant suggested to E.W. that they go to his friend's house down the street to smoke marijuana, she agreed.

Defendant testified that he, E.W., his friend, and his friend's girlfriend went to the basement and smoked marijuana. "One thing led to another," and he and E.W. ended up having sexual intercourse while defendant's friend was in another room.

Some time afterwards, E.W. said she needed to take a bus home. Defendant, his friend, and E.W. rode the bus together to E.W.'s stop. There, defendant offered to walk her home, but E.W. declined and walked off. Defendant and his friend then took the bus back to his home.

Defendant testified that he did not kidnap or rape E.W., did not push her into a car, and did not ever force her to have sex without her consent. On cross-examination, defendant admitted that he never told the police that he knew E.W.

In rebuttal, the State called Chicago police detective Brian Forberg. Detective Forberg testified that he spoke with defendant in the course of investigating E.W.'s case. After advising defendant of his *Miranda* rights, defendant denied having had sex with E.W. and never said he had consensual sex with her.

The jury found defendant guilty of aggravated criminal sexual assault and aggravated kidnapping, and the trial court entered judgment on the verdict.

At sentencing, the State presented a victim impact statement prepared by E.W., and offered the testimony of three witnesses in aggravation. First, Cook County sheriff's department officer Bennie Lopez described an incident that occurred while defendant was in custody. Officer Lopez heard a commotion coming from the central holding cell. He ran to the area and saw defendant wrestling with another corrections officer on the ground, holding

the officer by the neck. The other officer, who was in full uniform, was giving defendant verbal commands to stop resisting. Officer Lopez pulled defendant's hands off the officer's neck.

Cook County sheriff's department officer Patrick Malloy testified as to a second incident during defendant's pretrial custody. During a search of detainees, Officer Malloy and his partner found a shank in defendant's pants pocket. Officer Malloy described the shank as a sharpened metal object designed to be a knife.

Finally, Detective Forberg testified that E.W. had indicated to him she had become pregnant as a result of being sexually assaulted, even though she had received the morning after pill at the emergency room.

Following arguments, the trial court sentenced defendant to consecutive terms of imprisonment of 18 years for aggravated criminal sexual assault and 6 years for aggravated kidnapping. In the course of doing so, the trial court indicated that it had considered the presentence investigation report and the appropriate factors in aggravation and mitigation. In particular, the trial court noted defendant's prior record of delinquencies, the factual circumstances of the crime, and defendant's conduct since being in custody. The trial court stated that the sentence was necessary for the protection of the public, for defendant's rehabilitation, and to deter others from

committing the same offense. In mitigation, the trial court noted that defendant had an "unfortunate" family situation with his father and mother, but had a good relationship with other family members who came to court and offered support.

On appeal, defendant challenges the sufficiency of the evidence. He argues that E.W.'s testimony and version of events was unconvincing, contrary to human experience, and not corroborated in any meaningful way. He points out that E.W. did not explain why she failed to run when the car stopped behind her in the alley or scream when the men approached her, especially since she was in a residential neighborhood during daylight hours. Defendant also notes the absence of injuries to E.W.'s arms or face, E.W.'s failure to tell the police all the details of the attack the day after it occurred, and the absence at trial of the woman and man E.W. said she saw after the assault and before she got home. In contrast, defendant argues that his own testimony was clear, unimpeached, and more than sufficient to raise a reasonable doubt as to his guilt.

When reviewing the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The credibility of the witnesses, the weight to be given

their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 132 (1999). Reversal is justified only where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

Defendant's arguments regarding the sufficiency of the evidence involve matters of credibility. The jury heard both E.W.'s testimony and defendant's testimony. Since neither version of events was so implausible or improbable as to call its veracity into question, the decision of which version to believe rested with the jury. *People v. Daniel*, 311 Ill. App. 3d 276, 283 (2000). After hearing both stories, viewing the witnesses while testifying, and being made aware by defense counsel of the alleged deficiencies in E.W.'s testimony, the jury nevertheless chose to believe E.W. over defendant. This was its prerogative in its role as the trier of fact. *People v. Moser*, 356 Ill. App. 3d 900, 911 (2005).

Having heard all the evidence, the jury was convinced of defendant's guilt beyond a reasonable doubt. Because the jury is in a superior position to assess the credibility of witnesses, we

will not disturb the jury's determination. *Daniel*, 311 Ill. App. 3d at 283. Defendant's contention fails.

Defendant's next contention is that the prosecutor's closing argument was improper and deprived him of his right to a fair trial. Defendant argues that the prosecutor engaged in misconduct during rebuttal argument by repeatedly expressing her personal belief and opinion regarding which witness was telling the truth at trial. In particular, defendant asserts that it was improper for the prosecutor to use the phrase "we know" when arguing that E.W. was telling the truth. Defendant has identified three times the prosecutor uttered these words. First, she stated, "Let's talk about what supports [E.W.'s] testimony and why *we know* she's not lying or she didn't lie to you." Second, the prosecutor criticized defendant's version of events, in which E.W. had "the wits about her to concoct this conspiracy" with her mother, the police, the emergency room doctor, and the crime lab. The prosecutor stated, "Nonsense. Nonsense because *we know* [E.W.] was telling the truth. *We know* she was telling the truth because her testimony was supported by the evidence."

Defendant did not object to these remarks at trial or raise the issue in a posttrial motion. Accordingly, the issue is waived. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Nevertheless, defendant requests that we review the issue under

the plain error doctrine. Before we may apply the plain error exception to the waiver doctrine, we must determine whether error occurred at all. *People v. Bannister*, 232 Ill. 2d 52, 65 (2008).

In closing arguments, a prosecutor may comment on the evidence, comment on reasonable inferences drawn from that evidence, respond to defense comments that clearly invite responses, and comment on the credibility of witnesses. *People v. Sims*, 403 Ill. App. 3d 9, 20 (2010). When reviewing the propriety of comments made during closing arguments, we consider the closing argument in its entirety and individual remarks in context. *Sims*, 403 Ill. App. 3d at 20. Defendant is correct that it is improper for a prosecutor to personally vouch for the credibility of a witness. *Sims*, 403 Ill. App. 3d at 20. However, for a prosecutor's closing argument to be deemed improper vouching, she must explicitly state that she is offering her personal views on a witness's credibility. *People v. Pope*, 284 Ill. App. 3d 695, 706 (1996). If the jury has to infer that the prosecutor is asserting a personal opinion, no improper bolstering has occurred. *Pope*, 284 Ill. App. 3d at 706.

In this case, the prosecutor did not explicitly state that she was offering her personal view or opinion that E.W. was credible. Instead, her comments were such that the jury would have had to infer she was offering her personal views regarding E.W.'s credibility. When the prosecutor used the words "we

know," she followed those utterances with discussion of evidence that had been presented at trial. Thus, we cannot conclude that the prosecutor's remarks constitute improper expression of her personal views on E.W.'s credibility. We have examined the prosecutor's closing arguments and conclude that her use of the phrase "we know" did not improperly align her with the jury or invoke the integrity of her office to promote her personal opinions. See *People v. Walls*, 87 Ill. App. 3d 256, 270 (1980) (prosecutor's use of words "we know" was not done to convey his personal belief of the defendant's guilt but rather to comment properly on the credibility of defendant's alibi witness).

We find no error in the prosecutor's closing argument. Absent error, the plain error doctrine does not apply. Defendant's contention is forfeited.

Defendant's final contention on appeal is that his sentence is excessive. While acknowledging that his sentence falls within the permissible statutory range, he argues that his sentence should be reduced because of his young age, lack of prior felony convictions, personal history of being raised by his grandmother, and support of extended family members.

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 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). We will not disturb a sentencing determination absent an abuse of discretion. *People v. Hauschild*, 226 Ill. 2d 63, 90 (2007). Sentences within the permissible statutory range may be deemed 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).

Here, the record indicates that the trial court was well aware of the mitigating factors defendant has identified, including his lack of a history of felony convictions, his age, his social history, and his rehabilitative potential. Not only was this information included in the presentence investigation report considered by the trial court, but in addition, defense counsel argued in mitigation that defendant had the support of his grandmother, sister, brother, and uncle. 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). The record indicates that the trial court properly considered the evidence in aggravation and mitigation. Given the facts of the instant case, the interests of society, and the trial court's consideration of relevant aggravating and mitigating 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.

For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

Affirmed.