

No. 1-11-0816

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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. 08 CR 8635
)	
ROBERT LAMAR,)	Honorable
)	Thomas V. Gainer, Jr.,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

- ¶ 1 *Held:* There was sufficient evidence that defendant committed aggravated battery of a peace officer, and specifically that he knowingly caused bodily harm to the officer. Defendant's 16-year prison sentence for aggravated battery with a firearm was not excessive in light of the severity of the offense and that he was on probation for a weapons offense at the time of the instant offenses, and the court properly considered the mitigating factors raised by defendant.
- ¶ 2 Following a jury trial, defendant Robert Lamar was convicted of aggravated battery with a firearm, attempted armed robbery, and aggravated battery of a peace officer and sentenced to concurrent prison terms of 16, 8, and 5 years respectively. On appeal, defendant contends that

there was insufficient evidence to convict him of aggravated battery of a peace officer in that the State failed to prove that he knowingly harmed the officer. He also contends that his 16-year prison sentence is excessive in light of his youth, difficult childhood, lack of serious criminal history, and "great potential for rehabilitation due to his accomplishments and support structure."

¶ 3 Defendant and codefendant Eric Pointer were charged with the aggravated battery with a firearm and attempted armed robbery of Artemia Torres for allegedly demanding money from Torres by force or threat of force and shooting her on or about April 25, 2008. Defendant was also charged with aggravated battery of a peace officer for, on the same day, causing bodily harm to police officer Marek Drozd by striking him "about the body."

¶ 4 The evidence at trial was that defendant approached Torres as she was selling corn from a cart on the street, at first pretending to buy an ear of corn but then grabbing her and demanding money. She told him that she had no money, and indeed she had only about \$10 at the time. When Torres struggled to escape defendant's grasp, he shot her in the leg. Defendant and codefendant, who was standing nearby, then fled. Torres identified defendant and codefendant in a lineup. Shortly before the shooting, a witness saw two men sitting in a parked white sedan with temporary license plates, for which she provided a partial number. Another witness saw the struggle and shooting, then saw the shooter and another man flee in a white sedan with temporary plates. He hailed a passing police officer, who relayed the witness's report by police radio.

¶ 5 Officer Drozd heard the message and saw a white sedan with temporary license plates. He stopped the sedan and, when he approached it on foot, codefendant was the driver while defendant was the sole passenger and had a gun on the seat between his legs. Officer Drozd took the gun and placed it in his pocket, then handcuffed defendant's hands in front of him and ordered him to exit the car; defendant did so. Defendant attempted to run away but Officer Drozd kept hold of the handcuffs and was pulled to the ground. Defendant dragged him five to

eight feet before another officer subdued defendant. Officer Drozd had bruises on his forearms and abrasions on his knees as a result of the struggle, and defendant's wrist was lacerated because "he used full force to get away."

¶ 6 The gun recovered from defendant contained live bullets and one spent shell casing, which testing confirmed had been fired in that gun. At the police station, defendant confessed to attempting to rob Torres but claimed that, when she struggled with him, he tried to shoot into the ground to scare her. He also admitted in his statement that he attempted to flee, dragging Officer Drozd and himself to the ground because the "officer was holding onto [his] cuffs when [he] tried to run" but "the police officer never let go of the cuffs." The bullet that passed through Torres was not recovered, no useable fingerprints were found on the gun, bullets, or shell casing, and swabs from the hands of defendant and codefendant were negative for gunshot residue.

¶ 7 Defendant's motion for a directed verdict was denied, with the court finding that the reference to striking Officer Drozd about the body in the charge of aggravated battery of a peace officer was mere surplusage, the State was obligated to show that defendant knowingly caused bodily harm to Officer Drozd, and the evidence of that proposition was sufficient to survive the motion. Following instructions and deliberation, the jury found defendant guilty of aggravated battery with a firearm, aggravated battery of a peace officer, and attempted armed robbery. Defendant's posttrial motion was denied.

¶ 8 The pre-sentencing investigation report (PSI) showed a conviction for aggravated unlawful use of a weapon with a sentence of two years' probation that defendant was serving at the time of the instant offense. Defendant was born in 1990 and his parents separated when he was two years old. While he had little contact with his biological father, his mother and stepfather "provided a good stable household" and were both employed; he "is close" to his family including his young half-brother. Defendant left high school in his sophomore year and

did not receive a GED, and his only significant employment before the instant offense was for a month in 2006. He received psychological treatment for "anger issues" and admitted to addiction to alcohol and "ecstasy." His denial that he was in a gang was corroborated by the fact that his tattoos were not gang-related.

¶ 9 The defense entered into evidence a mitigation report and a group of character-reference letters. The mitigation report, prepared by a mitigation specialist for defense counsel, stated that defendant's biological father denied paternity and was "at best an absentee father, physically, emotionally and financially." Defendant's mother married another man, who was physically abusive towards her so that the marriage was dissolved when defendant was five years old. Defendant's mother then "brought a host of men into [his] life, although mostly on a short-term basis" so that "he did not have a positive male role model to emulate." She refused to assist defendant in meeting his biological father, so that he "blamed his mother for the absence of his father." In school, defendant showed a lack of self-control and "his misbehavior led to a referral for family counseling" which ended before defendant could benefit therefrom. However, defendant became close to his grandfather. When defendant was eight, his mother remarried and the family moved from Chicago to the suburbs. Defendant resented that his mother had married someone other than his father, that his stepfather tried to act as his father, and the move from the familiar city to the unfamiliar suburbs. Thus, defendant frequently visited the city, sometimes for weeks at a time. Defendant abused alcohol and "ecstasy" pills, for which his mother had him briefly hospitalized, but there was no follow-up treatment. Defense counsel argued in the mitigation report that the circumstances of the instant offenses was unlikely to recur because he was now willing to listen to his stepfather and church pastor, he "hopes to earn his GED," and he plans to leave Chicago to live and work with a relative in Nebraska.

¶ 10 At the sentencing hearing, the parties made no significant changes to the PSI, and the court acknowledged reading the mitigation report and letters. Defendant's stepfather Jeffrey Ford testified that defendant was six years old when he met him, and he undertook to become a father to defendant as his natural father had not been involved in raising him. While defendant had some behavioral problems at school, Ford and defendant "had a good relationship." Ford gave defendant chores around their home and in his barber shop, and he both showed respect to defendant and demanded that defendant show respect to him and defendant's mother. Defendant had a close relationship with his grandfather, who died in 1998. After that, defendant lived with his ailing grandmother, who could not supervise him as his mother and Ford had, so that defendant would "hang out" with people who Ford did not approve. Since defendant's arrest for the instant offenses, Ford believed defendant had matured and realized that he needed to change his life.

¶ 11 The State argued the severity of the offense; that is, that Torres was an innocent merchant attacked by defendant and shot in the leg for defending herself and her property. The State also noted that defendant was on probation for a weapons offense at the time of the instant offense. Defense counsel argued in mitigation defendant's youth, traumatic childhood from the absence of his biological father and death of his grandfather, that his family was in court to support him, and that he had shown maturity since the instant offenses.

¶ 12 Defendant addressed the court, asking not to be considered a criminal and pointing out his efforts to improve himself with occupational training.

¶ 13 Before passing sentence, the court noted that it reviewed the exhibits and facts in light of the aggravating and mitigating factors. Defendant's offense was unprovoked by Torres, the court found, and it was only by luck that she was not severely injured by defendant's gunshot. The court also noted that defendant was on probation for a gun offense when he committed the instant

offenses, some of which also involved a gun. The court sentenced defendant as stated above.

Defendant waived his right to a post-sentencing motion in open court, and this appeal followed.

¶ 14 On appeal, defendant first contends that there was insufficient evidence to convict him of aggravated battery of a peace officer in that the State failed to prove that he knowingly harmed Officer Drozd.

¶ 15 A person commits aggravated battery when he knowingly causes bodily harm to a person he knows to be a peace officer performing his official duties. 720 ILCS 5/12-3(a), -3.05(d)(4) (West 2010). A person "knows, or acts knowingly or with knowledge of [t]he result of his or her conduct *** when he or she is consciously aware that that result is practically certain to be caused by his conduct." 720 ILCS 5/4-5 (West 2010). Knowledge can be, and often is, proven with circumstantial evidence. *People v. Jasoni*, 2012 IL App (2d) 110217, ¶ 20.

¶ 16 Where a defendant fleeing police in a vehicle struck an officer and then a family of four, so that he was convicted of the aggravated battery of five persons, this court affirmed the conviction regarding the officer and reversed the convictions regarding the family. *People v. Schmidt*, 392 Ill. App. 3d 689, 701-07 (2009). The point of distinction was that "the officer was so close to the SUV that his hip was touching the driver's side front bumper. Thus, defendant did not need to swerve to hit him. In fact, while defendant drove straight, he certainly did not swerve to avoid the officer," while by contrast, "he acted recklessly rather than knowingly [regarding the family] because he could not have known that he would be unable to sufficiently slow the SUV; that this inability would result in the SUV traveling 'sideways'; or that, once traveling sideways, the SUV would do so in a manner to strike the Diaz family." *Id.* at 703, 705. In *People v. Lattimore*, 2011 IL App (1st) 093238, we affirmed the aggravated battery conviction of a defendant who, when confronted for shoplifting, struggled with a store security guard.

"Unlike the battery of the family members in *Schmidt*, defendant did not merely lose control during his effort to leave. Instead, defendant knew that he would struggle with store employees during each attempt. Defendant 'yanked' away from [store security guard] Lee to continue to leave, which is comparable to the *Schmidt* defendant's decision to speed away from the officer. Lee was so close to defendant, as the officer was to the *Schmidt* defendant, that it was practically certain he would be injured when defendant 'yanked' away from him." *Lattimore*, ¶ 57.

¶ 17 When presented with a challenge to the sufficiency of the evidence, this court must determine whether, after taking 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. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). On review, we do not retry the defendant and we accept all reasonable inferences from the record in favor of the State. *Id.* The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances; instead, it is sufficient if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt of the defendant's guilt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 60. Similarly, the trier of fact is not required to disregard inferences that flow normally from the evidence nor to seek all possible explanations consistent with innocence and elevate them to reasonable doubt. *Id.* A conviction will be reversed only where the evidence is so unreasonable, improbable, or unsatisfactory that a reasonable doubt of the defendant's guilt remains. *Beauchamp*, at 8.

¶ 18 Here, looking at the evidence in the light most favorable to the State as we must, we find sufficient evidence that defendant committed aggravated battery of a peace officer, and particularly that he knowingly harmed Officer Drozd. As defendant was handcuffed in front

rather than behind his back, it may be reasonably inferred that he could see and feel that Officer Drozd had a hold of his handcuffs. Defendant admitted in his post-arrest statement that Officer Drozd was holding his handcuffs when he tried to run. It is unlikely under such circumstances that he was unaware of the practical certainty that he would injure Officer Drozd to some degree by running away. Moreover, assuming *arguendo* that he did not know how hard or tight a grip Officer Drozd had when he first began to flee, he continued his flight after Officer Drozd fell to the ground, dragging Officer Drozd with him for several feet. From this, and from the injury to defendant's wrist, a finder of fact could reasonably infer that defendant was aware of the force with which he was pulling Officer Drozd. Even if at the very beginning of his flight he merely should have known that Officer Drozd could be injured thereby, defendant knowingly caused bodily harm to Officer Drozd by continuing his struggle to flee.

¶ 19 Defendant also contends that his 16-year prison sentence is excessive in light of his youth, difficult childhood, lack of serious criminal history, and "great potential for rehabilitation due to his accomplishments and support structure."

¶ 20 Aggravated battery with a firearm is a Class X felony punishable by 6 to 30 years' imprisonment. 720 ILCS 5/12-3.05(e)(1), (h); 730 ILCS 5/5-4.5-25(a) (West 2010). A sentence within statutory limits is reviewed on an abuse of discretion standard, so that we may alter a sentence only when it varies greatly from 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). So long as the trial court does not consider incompetent evidence or improper aggravating factors, or ignore pertinent mitigating factors, it has wide latitude in sentencing a defendant to any term within the applicable statutory range. *People v. Perkins*, 408 Ill. App. 3d 752, 762-63 (2011). This broad discretion means that we cannot substitute our judgment simply because we may weigh the sentencing factors differently. *Alexander*, 239 Ill. 2d at 212-13.

¶ 21 In imposing a sentence, the trial court must balance the relevant factors, including the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *Alexander*, 239 Ill. 2d at 213. The trial court has a superior opportunity to evaluate and weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *Alexander*, 239 Ill. 2d at 213. The court does not need to expressly outline its reasoning for sentencing, and we presume that the court considered all mitigating factors on the record absent some affirmative indication to the contrary other than the sentence itself. *Perkins*, 408 Ill. App. 3d at 763. Because the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the seriousness of the offense, nor does the presence of mitigating factors either require a minimum sentence or preclude a maximum sentence. *Alexander*, 239 Ill. 2d at 214; *People v. Flores*, 404 Ill. App. 3d 155, 158-59 (2010).

¶ 22 Here, defendant's aggravated battery with a firearm was committed against a small businesswoman, whom he shot for defending herself against his unprovoked attack in the course of attempting to rob her of the meager earnings from her pushcart. This offense does not stand out by the severity of the victim's physical injury but by the contrast between the victim's blamelessness and defendant's bold aggression. Moreover, defendant's "lack of a serious criminal history," as he characterizes it on appeal, is not borne out by the record. His prior offense was for aggravated unlawful use of a weapon, for which he was on probation when he committed the instant offenses. Notably, our legislature has expressly designated being on probation while committing another offense as an aggravating factor. 730 ILCS 5/5-5-3.2(a)(12) (West 2010). Defendant was not dissuaded by a weapons conviction from taking up a gun to commit the instant offenses, nor did the clemency shown by the circuit court in the earlier case effect his rehabilitation. Lastly, the trial court was properly apprised of all the mitigating factors

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now cited by defendant, many of which were expressly argued by defense counsel at sentencing. We see no basis for concluding that the trial court abused its discretion in sentencing defendant to a prison term near the middle of the statutory range: 16 years on a range of 6 to 30 years.

¶ 23 Accordingly, the judgment of the circuit court is affirmed.

¶ 24 Affirmed.