2016 IL App (1st) 143398-U

FOURTH DIVISION
December 29, 2016

No. 1-14-3398

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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. 13 CR 9710
	)	
TYWON JONES,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defendant was proven guilty of armed robbery beyond a reasonable doubt where the trial court assessed credibility and reviewed the identification testimony under *Neil v. Biggers*, 409 U.S. 188 1972), and the court considered the circumstantial evidence that defendant possessed a firearm during the commission of the offense. (2) The automatic transfer provision applies retroactively to defendant and we vacated defendant's sentence and remand to juvenile court for opportunity for the State to file for a discretionary transfer to criminal court.

¶ 2 Following a bench trial, defendant Tywon Jones, who was 17 years old at the time of the offense, was found guilty of armed robbery and subsequently sentenced to a term of 22 years in prison. Defendant appeals, arguing that: (1) he was not proven guilty beyond a reasonable doubt

where the victim's description of the height and weight of the offender differed significantly from defendant's height and weight; (2) the State failed to establish that an actual firearm was used and his conviction should be reduced to robbery; (3) defendant is entitled to a discretionary transfer hearing where an amendment to section 5-130 of the Juvenile Court Act (705 ILCS 405/5-130 (West 2016)) removed armed robbery from the listed excluded offenses, and such change was procedural and should be applied to cases pending on direct appeal; (4) the exclusion of 17-year-olds charged with felonies under the former version of section 5-120 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/5-120 (West Supp. 2013)) violates equal protection; (5) defendant should get the benefit of resentencing under section 5-4.5-105 of the Code of Corrections 730 ILCS 5/5-4.5-105 (West 2016)) which granted discretion in the imposition of firearm enhancements for defendants under 18; and (6) defendant is entitled to a reduction in the assessment of fees and fines.

¶ 3 On May 5, 2013, defendant was arrested and subsequently charged with one count of armed robbery and one count of aggravated unlawful restraint based on the robbery committed against Jerry Weatherby that night.

¶ 4 The following evidence was admitted at defendant's February 2014 bench trial.

¶ 5 Jerry Weatherby testified that at approximately 10:10 p.m. on May 5, 2013, he was in the area of 530 South Springfield Avenue after having bought food at Maxwell's to take to his girlfriend's house. Weatherby was walking across the bridge over Interstate 290 when he was approached by a group of men. They asked Weatherby if he had a lighter, and Weatherby answered no. As they passed Weatherby, one individual put a gun to Weatherby's stomach and said, "Don't move." He stated that there were more than two individuals involved.

¶ 6 Weatherby identified defendant as the individual who put the gun to his stomach. Weatherby testified that he was standing "almost face to face" with defendant. He said that defendant was not wearing a mask and his face was not obstructed. Weatherby described defendant's hair as "braids or dread" or a "twist in his hair." He also stated that he observed that one of defendant's front teeth was chipped. Weatherby testified that the gun was silver. He said he remained "still" after he was told not to move. While defendant held the gun to his stomach, Weatherby stated that the other individuals took items from his pockets and his hands. The men took his iPhone, wallet, and his food.

¶ 7 After the men went through his pockets, they went south and Weatherby went north on Springfield. He went to his girlfriend's house, which was on the other side of the bridge, and he called the police. He provided a description of defendant. Approximately five to ten minutes later, he was contacted by the police. He was told they would call if they found a match. Weatherby went home. He was contacted by the police again and later transported to an alley to identify a suspect. When he got to the alley, Weatherby first saw defendant inside a squad car. Weatherby remained in a squad car, but defendant was taken out of the squad car. Weatherby identified defendant as the individual who put the gun to his stomach. He stated that he was approximately 18 feet from defendant during the identification. He denied that he identified defendant because defendant was in the squad car or that the police had him in custody. When asked why did he pick defendant, Weatherby answered, "Because he matched the description." Weatherby said he recognized defendant's face from the bridge. He stated that defendant had chipped teeth and his hair was in dreads.

¶ 8 On cross-examination, Weatherby stated that the robbery occurred in "about one minute." Weatherby admitted that his initial description to 911 was a black male, age 18, 5'5", and 140

pounds with a dark complexion. He did not remember if he told the 911 operator that the perpetrator had dreads or a chipped tooth. Weatherby agreed that he was 5'7" and 160 pounds.

¶ 9 The parties then entered a stipulation. Officer Serrano, if called to testify, would testify that he responded at approximately 10:36 p.m. on May 5, 2013, to a robbery call. He was given a description of the offender with a firearm and observed an individual he would identify as defendant eastbound on Lexington near Pulaski. As they approached defendant for a field interview, defendant looked toward the officers and fled on foot through a gangway and then a vacant lot on Lexington. Officer Serrano radioed defendant's direction of travel to other officers on that beat. Officer Serrano never spoke to Weatherby at any point.

¶ 10 Officer Chris Maksud testified that at approximately 10:30 p.m. on May 5, 2013, he was on patrol in uniform in a marked squad car with a partner. He responded to a call for an armed robbery in the 500 block of South Springfield on the overpass of Interstate 290. As they were traveling to that location, he heard Officer Serrano's report that an individual who matched the description had been observed. They then proceeded to 3900 West Flournoy. They exited the vehicle and began to check the yards. Officer Maksud observed defendant "concealing himself in between the fence and the building" by "laying on the ground." Officer Maksud ordered defendant to keep his hand where the officer could see them, and defendant was then placed in handcuffs. Officer Maksud identified defendant in court as the individual observed in the yard. Officer Maksud observed that defendant's front tooth was chipped.

¶ 11 Officer Maksud testified that Weatherby came to the scene. Initially when Weatherby arrived, defendant was in a squad car, but he was subsequently removed from the car. Weatherby identified defendant. Defendant was then placed under arrest. Nothing was recovered during a custodial search of defendant. Officer Maksud later learned that defendant resided at 4718 West

Erie, which was not located near 3918 West Flournoy. 3918 West Flournoy was located half a block to a block from 530 South Springfield.

¶ 12 On cross-examination, Officer Maksud testified that the initial description of the suspect was black male, age 18, 5'5", approximately 140 pounds, and a dark complexion. He could not recall if the initial description included that the individual had dreadlocks, but he said that "at some point that was transmitted over the radio." Officer Maksud also stated that they were told over dispatch that the suspect had a chipped tooth. He admitted that his report did not indicate that defendant was laying on the ground or concealing himself between a house and a fence. Officer Maksud did not have any contact with Weatherby prior to participating in the search. Officer Maksud testified that as part of defendant's processing at the police station, his height was determined to 6'1" and he weighed approximately 183 pounds. He also stated that defendant had an active warrant at the time of his arrest. On redirect, Officer Maksud testified that defendant was a black male, 17 years old, with a dark complexion, and dreadlocks.

¶ 13 Following Officer Maksud's testimony, the State rested. Defendant moved for a directed finding, which the trial court denied.

¶ 14 Defendant presented a stipulation that if called to testify, an employee of the Office of Emergency Management, identified by call number C 549510, would testify that he received a call at the 911 call center from a person identifying himself as Jerry Weatherby at approximately 10:36 p.m. on May 5, 2013, regarding a robbery that had just occurred at 3899 West Congress Parkway. The employee would also testify that he was given a description of the suspect involved in the robbery as "a male black 18 years of age, height 5-5, weighing 140 pounds, dark complexion with a silver pistol" who fled southbound on Springfield. This description was sent to the police through radio dispatch.

¶ 15 Following closing arguments, the trial court found defendant guilty of both armed robbery and aggravated unlawful restraint. Defendant filed a motion for a new trial, which the court denied. The trial court subsequently sentenced defendant to 7 years for the armed robbery with an additional 15 years for the firearms enhancement, for a total of 22 years. Defendant moved to reconsider the sentence, which the trial court denied.

¶ 16 This appeal followed.

¶ 17 Defendant first argues that the State failed to prove defendant guilty beyond a reasonable doubt. Specifically, defendant contends that the discrepancies and the omission of dreadlocks and a chipped tooth in Weatherby's initial description of the suspect show that Weatherby's identification of defendant is unreliable and insufficient to support his conviction.

¶ 18 When this court considers a challenge to a criminal conviction based upon the sufficiency of the evidence, it is not our function to retry the defendant. *People v. Hall*, 194 Ill. 2d 305, 329-30 (2000). Rather, our inquiry is limited to "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." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); accord *People v. Cox*, 195 Ill. 2d 378, 387 (2001). It is the responsibility of the trier of fact to "fairly *** resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." *Id.*

¶ 19 The reviewing court must carefully examine the record evidence while bearing in mind that it was the fact finder who saw and heard the witnesses. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). Testimony may be found insufficient under the *Jackson* standard, but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. *Id*. However, the fact a judge or jury did accept testimony does not

guarantee it was reasonable to do so. Reasonable people may on occasion act unreasonably. Therefore, the fact finder's decision to accept testimony is entitled to great deference but is not conclusive and does not bind the reviewing court. *Id.* Only where the evidence is so improbable or unsatisfactory as to create reasonable doubt of the defendant's guilt will a conviction be set aside. *Hall*, 194 Ill. 2d at 330.

¶ 20 To prove a defendant guilty of armed robbery, the State was required to prove that defendant knowingly takes property from the person or presence of another by the use of force or by threatening the imminent use of force while armed with a firearm. 720 ILCS 5/18-2(a)(2) (West 2012). Defendant challenges his conviction based on the strength of Weatherby's initial description. It is undisputed that the initial description stated that the suspect was 5'5" and 140 pounds, but defendant was 6'1" and approximately 180 pounds at the time of offense. Weatherby identified defendant in the showup within an hour of the robbery and also in court during his testimony.

¶ 21 "The State bears the burden of proving beyond a reasonable doubt the identity of the person who committed the charged offense." *People v. Lewis*, 165 Ill. 2d 305, 356 (1995). The testimony of a single witness, if it is positive and the witness credible, is sufficient to convict. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Illinois courts consider identification testimony under the factors set forth by the Supreme Court in *Neil v. Biggers*, 409 U.S. 188 (1972). *Id.* Those factors include: "(1) the opportunity the victim had to view the criminal at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description of the criminal; (4) the level of certainty demonstrated by the victim at the identification confrontation; and (5) the length of time between the crime and the identification confrontation." *Id.*

¶ 22 Defendant had a bench trial and in its findings, the trial court explicitly detailed the *Biggers* factors in evaluating the evidence and Weatherby's identification. The court found Weatherby to be a "credible witness." The court noted that there was no "delayed outcry," as Weatherby immediately reported the robbery to the police. The court further noted that defendant did not have any of the proceeds from the robbery on his person, nor was the firearm recovered. The court acknowledged that defense counsel made "a very strong argument" regarding Weatherby's "misdescription" of the offender. The court continued to make a detailed finding regarding Weatherby's identification.

> "Mr. Weatherby stated that he *** was very close to him. He had an opportunity to see him, see the offender, had an opportunity to see him closely. He did not testify or was evasive with regard to the fact that he was able to see the offender's face that had the weapon on him.
>
> The second factor is the witness' degree of attention at the time of the offense. Obviously we don't have a situation where the victim is confronted from behind, where the eyewitness or the victim was unable to actually see what was going on. I believe the witness' degree of attention was very succinct at that point in time according to his testimony.
>
> The witness' earlier description of the offender which is argued very persuasively by [defense counsel] that the identification is off—the description is off. But there [are] many factors in the description that are, in fact, corroborated. The dark

> complexion of this defendant, and I will note he is dark complected.
>
> The fact that he had dreads or a twist. While it may not have been contained in any simulcast, I do find the witness to be credible with the fact that that's what the offender had and that's what he told the police officer. The chipped tooth also. The age of the offender all are very detailed, and again, they are similar to the identity of this particular defendant.
>
> The next factor *** is the level of certainty shown by the witness when confronting the defendant. The victim identifies this individual immediately. It does not appear that he is waffling either at the time on the scene or at trial. I had an opportunity to look at his testimony, to view him, to look at his demeanor while he testified, and he did not waiver at all in the identification.
>
> The last circumstance is the length of time between the offense and the identification confrontation. Again, this probably somewhere between 20 minutes to maybe 40 minutes. It is not over several days. It is not over several months. It is at or near the time of the offense."

¶ 23 The trial court further found "the testimony of the victim to be credible," but stated that it did "take into consideration that the height and weight is off." The court concluded that "the identification is clear, convincing, and beyond a reasonable doubt. I do believe that the State has proven the identity of this defendant without question and beyond a reasonable doubt."

> "While this is a single eyewitness, it is a very, very strong eyewitness with no axe to grind, no infirmities with regard to identification, and I believe as I stated before the identification is very convincing to me, and it is proof beyond a reasonable doubt."

¶ 24 When we consider all the evidence in the light most favorable to the State, we conclude that a rational trier of fact could find defendant guilty beyond a reasonable doubt. Defendant strongly challenged Weatherby's identification before the trial court. The court weighed this argument against the evidence to reach its verdict. The court explicitly weighed the *Biggers* factors in reaching its verdict. It considered the credibility of Weatherby's testimony. We find the trial court's analysis to be extremely thoughtful of the issue and well reasoned. As we have stated above, the testimony of a single, credible eyewitness is sufficient to sustain a conviction. "In assessing identification testimony, we will not substitute our judgment for that of the trier of fact on questions involving witness credibility." *People v. Negron*, 297 Ill. App. 3d 519, 530 (1998). We will not substitute our judgment for the trial court. Accordingly, defendant's challenge to the sufficiency of the evidence must fail.

¶ 25 Next, defendant asserts that his conviction should be reduced to robbery because the State failed to establish that an actual firearm was used in the offense. The State maintains that the evidence was sufficient to prove that the firearm used during the commission of the robbery was a real gun.

¶ 26 As we previously stated, when this court considers a challenge to a criminal conviction based upon the sufficiency of the evidence, it is not our function to retry the defendant. *Hall*, 194 Ill. 2d at 329-30), instead our inquiry is limited to "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" (emphasis in original) *Jackson*, 443 U.S. at 319)).

¶ 27 The evidence at trial was that Weatherby was walking on the bridge over Interstate 290 when he was approached by several men. He was asked if he had a lighter, and he responded no. Then defendant put a silver gun to Weatherby's stomach and said, "Don't move." The other men proceeded to rob Weatherby. Weatherby testified that the gun was held to his stomach throughout the commission of the crime, which lasted one minute. The gun was never recovered.

¶ 28 Defendant argues that Weatherby was "not shown to have any expertise in the visual identification of firearms and no weapon was discharged or recovered." According to defendant, the State failed to establish beyond a reasonable doubt that the silver item pointed at Weatherby was a "true firearm."

¶ 29 Section 2-7.5 of the Criminal Code of 1961 (Code) (720 ILCS 5/2-7.5 (West 2012)) provides that the term " 'firearm' has the meaning ascribed to it in Section 1.1of the Firearm Owners Identification Card Act" (FOID Act) (430 ILCS 65/1.1 (West 2012)). The FOID Act defines a firearm as: "any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas." 430 ILCS 65/1.1 (West 2012). The definition specifically excludes any pneumatic, spring, paint ball or BB gun and assorted other devices. *Id*. Defendant argues the State did not prove that the "gun" Weatherby testified was put to his stomach during the robbery met this definition of a firearm or did not fall under any of the exceptions.

¶ 30 Illinois courts have consistently addressed the issue of the sufficiency of the evidence from which a trier of fact may infer that an object used in a crime was a firearm. In *People v. Ross*, 229 Ill.2d 255, 273-76 (2008), the supreme court rejected a presumption that an object

appearing to be a handgun is a loaded and operable firearm, instead finding that a trier of fact may infer from trial evidence that an object was a firearm. Ultimately, the supreme court concluded that the evidence was insufficient to prove that the "gun" used by the defendant was a dangerous weapon because evidence was presented that the gun was actually a small BB gun, with only a three-inch barrel, which was not presented into evidence so there could be no inference the weapon could be used as a bludgeon. *Id*. at 276-77.

¶ 31 Following *Ross*, reviewing courts have held that unequivocal eyewitness testimony that a defendant held a gun is sufficient circumstantial evidence that he or she was armed with a firearm, and the State need not prove with direct or physical evidence that a particular object is a firearm as defined by statute. *People v. Clark*, 2015 IL App (3d) 140036, ¶¶ 20-29; *People v. Wright*, 2015 IL App (1st) 123496, ¶¶ 74–79, appeal allowed, No. 119561; *People v. Fields*, 2014 IL App (1st) 110311, ¶¶ 34–37; *People v. Toy*, 407 Ill.App.3d 272, 286–93 (2011).

¶ 32 More recently, the supreme court revisited this issue in *People v. Washington*, 2012 IL 107993, ¶ 1, where the court considered whether the State presented sufficient evidence the defendant possessed a "dangerous weapon." The court acknowledged amendments to the Code that took effect January 1, 2000, and which created "substantively distinct offenses based on whether the offenses were committed with a dangerous weapon *** or committed with a 'firearm.' " *Id*. ¶ 6. The defendant in that case had been charged under the preamendment statutes, which required the State to prove the offenses were committed "while armed with a dangerous weapon." *Id.* ¶ 9. In distinguishing the case from *Ross*, the supreme court observed that the victim "had an unobstructed view of the weapon defendant had in his possession during the commission of the crimes. He testified that it was a gun." *Id.* ¶ 35. The court concluded that given the victim's "unequivocal testimony and the circumstances under which he was able to

view the gun, the jury could have reasonably inferred that defendant possessed a real gun." *Id*. ¶ 36.

¶ 33 Defendant asserts that the holding in *Washington* is "of little value here" because the supreme court considered the preamendment statutory definition of a firearm. The statute to which the jury in *Washington* had to apply the facts is of less significance than the reasonable inference the *Washington* court found the jury could find from the testimony of a single credible witness. The *Washington* court did not find the testimony of a single credible witness sufficient because the testimony went to prove a less-specific definition of a dangerous weapon; rather, the *Washington* court found the testimony sufficient evidence the object was a dangerous weapon because a single credible witness testified the object was a "gun" and the trier of fact could reasonably infer it was a "real gun." See *Fields*, 2014 IL App (1st) 110311, ¶ 36 ("While this statutory definition [of firearm] excludes some specific types of firearms, the term 'firearm' is defined broadly, including 'any device, by whatever name known, which is designed to expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas.' [Citations.] Thus, contrary to [the defendant's] assertion that the State must prove the gun is a firearm by direct or physical evidence, unequivocal testimony of a witness that the defendant held a gun is circumstantial evidence sufficient to establish that a defendant is armed during a robbery."). "An inference is a factual conclusion that can rationally be drawn by considering other facts. [Citations.]" (Internal quotation marks omitted.) *People v. Moore*, 365 Ill.App.3d 53, 58 (2006). "Where the evidence presented is capable of producing conflicting inferences, it is best left to the trier of fact for proper resolution. [Citation.]" *Id*. In *Washington*, our supreme court found that one such reasonable inference was that an object was a "real gun." *Id*. ¶ 36.

Washington clearly stands for the proposition that the unequivocal testimony of a lay witness given after a sufficient opportunity to observe is enough evidence from which a reasonable trier of fact may infer an object is "a real gun." *Id.*

¶ 34 Here, the trial court had the opportunity to address this question which defendant raised in his closing argument. The trial court found,

> "The victim – while the victim did not break down the make and model of the weapon, I believe the witness did, in fact succinctly and adequately describe that the weapon that was brandished on him was, in fact, a firearm. The weapon was placed in the [victim's] stomach at that point in time."

¶ 35 We agree with the trial court's conclusion that the evidence was sufficient to support a finding that defendant possessed a firearm during the commission of the robbery beyond a reasonable doubt.

¶ 36 Next, defendant asserts that this court should remand his case for a discretionary transfer hearing in juvenile court because a 2016 amendment to section 5-130 of the Juvenile Court Act removed armed robbery from the list of excluded offenses. Defendant contends that this amendment is procedural and should be applied to cases pending on direct appeal.

¶ 37 Recently, the General Assembly removed armed robbery committed with a firearm from the list of offenses for which a juvenile must be automatically tried in adult court. Pub. Act 99-258, § 5 (eff. Jan. 1, 2016) (amending 705 ILCS 405/5-130(1)(a)). At the time this offense occurred, section 5-130 required that all juveniles 15 years old and up be tried as adults when they were charged with armed robbery committed with a firearm. 705 ILCS 405/5-130(1)(a) (West 2012).

¶ 38 The Illinois Supreme Court recently considered the retroactivity of Public Act 99-258's amendment to section 5-130 in *People ex rel. Alvarez v. Howard*, 2016 IL 120729. In *Howard*, the defendant was charged with a murder he allegedly committed when he was 15 years old. *Id.* ¶¶ 3-4. At the time the defendant was charged, section 5-130 required all juveniles 15 and older to be automatically transferred to adult court when they were charged with first-degree murder. *Id.* ¶ 4. While the charges against the defendant were pending, the legislature passed Public Act 99-258, which amended section 5-130 to raise the age of automatic transfer from 15 to 16. *Id.* ¶ 5. The defendant filed a motion to hold a hearing on whether he should be transferred, and the trial court granted that motion. *Id.* ¶¶ 5, 7. The State then sought leave to file an action for a writ of *mandamus* in the Illinois Supreme Court, asking for a writ compelling the trial court to keep the case in adult court. *Id.* ¶ 10.

¶ 39 The supreme court denied the State's request for the writ because the court concluded that the amendments to section 5-130 found in Public Act 99-258 applied retroactively. *Id.* ¶¶ 28, 35. The court recognized that it had adopted the United States Supreme Court's test from *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), when considering the retroactivity of legislation. *Howard*, 2016 IL 120729, ¶ 19. When applying the *Landgraf* test, a court should first look to whether the legislature clearly indicated the temporal reach of the amended statute. *Id.* If it did, then the legislature's expression of its intent controls, absent some constitutional problem. *Id.* If the legislature did not signal its intent, then the court looks to whether application of the statute "would have a retroactive impact." *Id.*

¶ 40 The supreme court pointed out that "an Illinois court will never need to go beyond step one of the *Landgraf* test because the legislature has clearly set forth the temporal reach of every amended statute." *Id.* ¶ 20. Section 4 of the Statute on Statutes (5 ILCS 70/4 (West 2014))

constitutes a "general savings clause" that has been interpreted "as meaning that procedural changes to statutes will be applied retroactively, while substantive changes are prospective only." *Howard*, 2016 IL 120729, ¶ 20. In other words, if the statutory amendment itself does not indicate its temporal reach, "it is provided by default in section 4." *Id.*

¶ 41 The supreme court then applied that version of the test to the amendments to section 5-130. *Id*. ¶¶ 21, 28. The court found "nothing in the text of the amendment itself that indicates the statute's temporal reach," noting that the amendment to section 5-130 did not contain a savings clause even though other portions of Public Act 99-258 did. *Id*. ¶ 21. The court then found that the amendments to section 5-130 were procedural, relying on precedent establishing that the decision to try a defendant in juvenile or adult court is a procedural one. *Id*. ¶ 28 (citing *Patterson*, 2014 IL 115102, ¶ 104). Because the amendments were procedural, the default legislative intent in section 4 of the Statute on Statutes applied and the amendments were retroactive. *Id*.

¶ 42 We conclude that the holding in *Howard* applies in the present case. We acknowledge that the specific provision at issue in *Howard* was the age-threshold increase in Public Act 99-258, whereas this case involves Public Act 99-258's removal of armed robbery committed with a firearm from the list of automatic-transfer offenses. However, Public Act 99-258 amended the same statutory provision in both instances, specifically section 5-130. Therefore, the supreme court addressed the same question before us here, whether the amendments to section 5-130 contained in Public Act 99-258 are retroactive. Therefore, *Howard* is applicable here.

¶ 43 While the *Howard* case was pending before the trial court when Public Act 99-258 was passed, we would apply the same test here, even though this case was pending on direct appeal when the amendment was enacted. "[S]ection 4 represents a clear legislative directive as to the

temporal reach of statutory amendments and repeals: those that are procedural in nature may be applied retroactively, while those that are substantive may not." *Caveney v. Bower*, 207 Ill. 2d 82, 92 (2003). As previously observed, "[w]hether a defendant is tried in juvenile or criminal court is purely a matter of procedure." *Patterson*, 2014 IL 115102, ¶ 104. See, *e.g.*, *People v. Glisson*, 202 Ill. 2d 499, 507 (2002) (applying section 4 of Statute on Statutes to the question of retroactivity of a procedural statutory amendment passed while case pending on direct appeal); *People v. Digirolamo*, 179 Ill. 2d 24, 50 (1997) ("Where the legislature intends a retroactive application of the amendment and the statutory amendment relates to changes in procedure or remedies, and not substantive rights, it applies retroactively to pending cases."); *Johnson v. Edgar*, 176 Ill. 2d 499, 518-19 ("Generally, where the legislature changes the law while an appeal is pending, the case must be disposed of by the reviewing court under the law as it then exists, not as it was when the decision was made by the lower court."); *People v. Jamerson*, 292 Ill. App. 3d 944, 947-48 ("In the absence of legislative intent to the contrary, when the legislature amends the law while an appeal is pending, the reviewing court is to apply the law in effect at the time of the decision. [Citation.] Amendatory acts which are procedural in nature apply retrospectively to matters which are pending on the effective date of the amendment."). Accordingly, the holding in *Howard* continues to apply when defendant's case was pending on direct appeal when Public Act 99-258 was passed.

¶ 44 Further, the supreme court in *Howard* rejected a similar argument advanced by the State, in that, the amendment was intended to apply only prospectively.

> "The amendment was passed by the legislature in May 2015, but it did not become effective until January 1, 2016. This court has held that the delaying of a statute's implementation date can be

considered evidence that the legislature intended prospective application. See, *e.g.*, *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 186-88 (2011); *People v. Brown*, 225 Ill. 2d 188, 201 (2007). Those cases, however, were ones in which the legislature expressly delayed the implementation of the statute in the text of the statutory amendment. See Pub. Act 94-558 (eff. Jan. 1, 2006) (*General Motors*); Pub. Act 90-590 (eff. Jan. 1, 1999) (*Brown*). By contrast, the amendment at issue here was delayed by operation of section 1(a) of the Effective Date of Laws Act (Effective Date Act) (5 ILCS 75/1(a) (West 2014)), which provides that, '[a] bill passed prior to June 1 of a calendar year that does not provide for an effective date in the terms of the bill shall become effective on January 1 of the following year, or upon its becoming a law, whichever is later.' The Effective Date Act implements the constitutional directive that the General Assembly provide a uniform effective date for laws passed prior to June 1 of a calendar year. See Ill. Const. 1970, art. IV, § 10. The Effective Date Act helps to ensure that parties have sufficient opportunity to conform their conduct to the law (see *Mulligan v. Joliet Regional Port District,* 123 Ill. 2d 303, 315 (1988)), and it 'alleviate[s] confusion when the Governor's action on a bill occurs subsequent to the specified effective date contained therein' (*People ex rel. American Federation of State, County & Municipal Employees v.*

> *Walker*, 61 Ill. 2d 112, 118 (1975))." *Howard*, 2016 IL 120729, ¶ 22.

¶ 45 The *Howard* court concluded "there is clearly nothing inconsistent with an amendment being applied retroactively even though its implementation is delayed by the Effective Date Act." *Id.* ¶ 26. Further, the court reasoned that

> "it is clear that the legislature itself does not view the Effective Date Act as determining the temporal reach of statutory amendments. As we noted above, the legislature included savings clauses with respect to some portions of Public Act 99-258 but not with respect to others. This is clear evidence that the legislature intended only some of the amendments to be prospective only. If the State is right that operation of the Effective Date Act renders all of the amendments prospective only, then these savings clauses would have been wholly unnecessary and superfluous. The legislature would never have to include a savings clause for any statutory amendment that lacked an effective date." *Id.* ¶ 27.

¶ 46 Accordingly, we find the amendments to section 5-130 in Public Act 99-258 are retroactive. We note that several recent appellate court decisions have also concluded that amendments to Public Act 99-258 are retroactive. See *People v. Scott*, 2016 IL App (1st) 141456, ¶ 51; *People v. Ortiz*, 2016 IL App (1st) 133294, ¶ 35; *People v. Patterson*, 2016 IL App (1st) 101573-B, ¶ 15.

¶ 47 In the present case, defendant was charged with armed robbery which was excluded from juvenile court jurisdiction. He was subsequently convicted and sentenced in criminal court, and

while his appeal was pending the legislature enacted the amendment to section 5-130, which eliminated the offense of armed robbery as an excluded offense, and thus, granting the juvenile court discretion in transferring the case to the criminal court. Since the prior version of the statute was in effect during defendant's proceedings, the State did not file a petition for a transfer hearing under section 5-805 of the Juvenile Court Act (705 ILCS 405/5-805 (West 2014)). A hearing under section 5-805 will allow the juvenile court to consider defendant's age, history, and the circumstances of the offense. Accordingly, we affirm defendant's conviction for armed robbery, but vacate his sentence and remand the case to the juvenile court and give the State an opportunity to file a petition for a transfer hearing if it so chooses. See *People v. Brown*, 225 Ill. 2d 188, (2007) (transferring case to juvenile court for a new transfer hearing after statute that governed prior transfer hearing was ruled void *ab initio*); *People v. Clark*, 119 Ill. 2d 1 (1987) (finding that the juvenile court transfer hearing was inadequate, the supreme court remanded the case to the juvenile court for a new transfer hearing); *Patterson*, 2016 IL App (1st) 101573-B, ¶¶ 20-21 (finding automatic transfer provision retroactive, the reviewing court remanded the case to the juvenile court to allow the State to seek a discretionary transfer).

¶ 48 We need not reach defendant's argument that the amendments to section 5-4.5-105 are retroactive in his case. If a hearing is held and the court determines that defendant's case should be transferred to criminal court for sentencing, then defendant is entitled to the benefit of the amendments to section 5-4.5-105 of the Illinois Code of Corrections (730 ILCS 5/5-4.5-105 (West 2016)), which provides a new sentencing scheme for individuals under 18 years of age at the time of the commission of an offense. "In general, the new statute requires the sentencing judge to take into account several factors in mitigation in determining the appropriate sentence for those under 18." *People v. Reyes*, 2016 IL 119271, ¶ 11. Under section 4 of the Statute on

Statutes, a defendant is entitled to be sentenced under the law in effect at the time of the commission of the offense or at the time of sentencing. 5 ILCS 70/4 (West 2014); see also *Reyes*, 2016 IL 119271, ¶ 12; *People v. Hollins*, 51 Ill. 2d 68, 71 (1972). Therefore, defendant's argument regarding retroactivity is moot.

¶ 49 We also do not reach defendant's argument that the exclusive jurisdiction provision of the Juvenile Court Act (705 ILCS 405/5-120 (West Supp. 2013) violates his equal protection rights. First, we believe the issue is moot because defendant is already getting the relief he is seeking, to be treated like minors under the age of 17, in that he is getting a discretionary transfer hearing. As a general rule, Illinois courts do not decide moot questions, render advisory opinions, or consider issues where the result will not be affected regardless of how those issues are decided. *Wright Development Group, LLC v. Walsh*, 238 Ill. 2d 620, 632 (2010); see also *In re Alfred H.H.*, 233 Ill. 2d 345, 351 (2009); *In re Barbara H.*, 183 Ill. 2d 482, 490 (1998). "Where, as here, a decision on the merits cannot result in appropriate relief to the prevailing party, such a decision is essentially an advisory opinion." *Barbara H.*, 183 Ill. 2d at 491. "Actions will be dismissed as moot once '[t]he plaintiffs have secured what they basically sought.' " *Morgan v. Department of Financial and Professional Regulation*, 374 Ill. App. 3d 275, 305 (2007) (quoting *People ex rel. Newdelman v. Weaver*, 50 Ill. 2d 237, 241 (1972)). The supreme court in *Alfred H.H.* discussed three exceptions to the mootness doctrine: the public interest exception, the capable of repetition yet avoiding review exception, and the collateral consequences exception. *Alfred H.H.*, 233 Ill. 2d at 355-63. We have considered these three exceptions and conclude that none are applicable in this case.

¶ 50 Second, "courts do not rule on the constitutionality of a statute where its provisions do not affect the parties [citation], and decide constitutional questions only to the extent required by

the issues in the case." *People v. Mosley*, 2015 IL 115872, ¶ 11. Since defendant's case is being remanded to the juvenile court, he is unaffected by the prior version of the exclusive jurisdiction provision. We will not consider a constitutional question when we are not required.

¶ 51 Because we have vacated defendant's sentence, we need not reach his arguments regarding the application of presentence credit to the fines and fees imposed.

¶ 52 Based on the foregoing reasons, we affirm defendant's conviction for armed robbery, but we vacate defendant's sentence. We remand this case to the juvenile court to allow the State an opportunity to seek a discretionary transfer to adult criminal court. If the State seeks a discretionary transfer and the circuit court determines defendant's case should be transferred to criminal court, a new sentence under section 5-4.5-105 shall be imposed. If, however, the State does not seek a discretionary transfer or the court denies a discretionary transfer, defendant's conviction should be vacated and an appropriate finding and disposition shall be entered by the juvenile court.

¶ 53 Affirmed in part, vacated in part, and remanded with directions.