FIRST DIVISION
October 22, 2018

No. 1-15-2063

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 15798 (02)
	)	
JARVIS WINFIELD,	)	Honorable
	)	William Timothy O'Brien,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE MIKVA delivered the judgment of the court.
Justices Pierce and Walker concurred in the judgment.

O R D E R

¶ 1 *Held*: The State proved beyond a reasonable doubt that the aggravated kidnapping committed by defendant was not incidental to the attempted armed robbery. Where defendant conceded the accuracy of the information in the pre-sentence investigation report, and that information matched the information on one of the two certified dispositions of prior convictions presented by the State, defendant was properly sentenced as a Class X offender.

¶ 2 After a bench trial, defendant Jarvis Winfield was convicted of aggravated kidnapping, attempted armed robbery, and unlawful possession of a weapon by a felon. He was sentenced to

a total of 25 years in prison. On appeal, Mr. Winfield argues that (1) his conviction for aggravated kidnapping should be reversed because the kidnapping was not a separate crime but rather was incidental to the armed robbery, and (2) the trial court erred in sentencing him as a Class X offender based on a prior conviction for an individual named "Dub Mayfield" when the State offered no evidence that Mr. Winfield and Dub Mayfield were the same person. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Mr. Winfield and his codefendant, Roosevelt Hall, who is not a party to this appeal, were both arrested in connection with an attempted armed robbery of the T-Mobile store located at 4000 West Fullerton Avenue in Chicago, Illinois (the Fullerton store), that occurred on August 2, 2010. Mr. Winfield was indicted on a variety of offenses, including attempted first-degree murder, aggravated discharge of a firearm, aggravated kidnapping based on his possession of a weapon during the commission of a kidnapping, being an armed habitual criminal, attempted armed robbery, and unlawful use of a weapon by a felon. The court held severed but simultaneous bench trials for Mr. Winfield and Mr. Hall.

¶ 5 The Fullerton store was set up with a showroom in the front, where employees worked with customers. There was a back room in the northeast corner of the store that could be accessed with a code or a company key. The back room functioned as a break room, with a table and chairs for employees. The door leading from the showroom into the back room was metal and was designed to automatically swing shut and lock when not in use. Behind the back room was a safe room that contained the company's phones.

¶ 6 In July 2010, another T-Mobile store, four or five blocks away from the Fullerton store, had been robbed, and a mass text message describing the robbers had been sent out to all the

employees of the Fullerton store. On August 1, 2010, two individuals who matched the descriptions from the text came to the Fullerton store. During the afternoon of August 2, and again that evening at approximately 8 p.m., one of the individuals matching that description again came to the Fullerton store. At that point, the Chicago Police Department was contacted and an officer arrived at the store at around 8:30 p.m.

¶ 7 At trial, the State's evidence came primarily from the three employees who were working at the Fullerton store the night of August 2—Cindy Hernandez, Issa Khoury, and Edgar Valentin—and Chicago police officer Matthew Scott, who was the officer who had come to the store in response to Mr. Valentin's call to the Chicago Police Department.

¶ 8 When Officer Scott arrived, he and Mr. Valentin went into the back room. Mr. Khoury testified that about five minutes after Officer Scott got there, an individual, who Mr. Khoury identified at trial as Mr. Winfield's codefendant, Mr. Hall, arrived. Mr. Hall asked Mr. Khoury about upgrading his phone, which was not a T-Mobile phone. After observing Mr. Hall for about 20 seconds, Ms. Hernandez walked to the back room. Ms. Hernandez testified that as she walked toward the back room, she saw another individual walking toward the front door of the store in a white shirt. In the back room, Ms. Hernandez told Mr. Valentin there was someone there to see him, giving him a look to warn him that something was wrong.

¶ 9 Mr. Khoury testified that he saw Mr. Hall turn towards the front door as another individual—wearing a white shirt and a Jamaican hat with fake dreadlocks—was walking towards the store. Mr. Khoury testified that as the second individual approached the store, Mr. Hall took out a gun, held it to Mr. Khoury's back, and said, "go to the back, go to the back." Mr. Khoury walked toward the back room of the store. Ms. Hernandez saw Mr. Hall had a gun to Mr. Khoury's back, and so she also walked to the back room, followed by Mr. Khoury. Both

employees were followed by Mr. Hall.

¶ 10 In the back room, Officer Scott held open the door leading to the showroom with his left hand and put his right hand on his handgun. He positioned himself between the door and the wall in a way so that he was hiding behind the door. Mr. Valentin testified that as the door to the back room was held open, he could see into the main showroom. Mr. Valentin saw a man, who he later identified as Mr. Winfield, wearing a Jamaican wig and pointing a black gun in his direction. Mr. Valentin testified that Mr. Winfield told him to "go to the back" and "open the safe," so Mr. Valentin started walking toward the safe room that was behind the back room.

¶ 11 Ms. Hernandez, Mr. Khoury, and Mr. Hall then entered the back room. Once Mr. Hall was in the room, Officer Scott announced "police, police." Mr. Hall turned towards the officer, the officer fired his handgun, and Mr. Hall ran back into the showroom. Officer Scott fired his gun four times in Mr. Hall's direction while the door to the showroom was still open but, while firing, Officer Scott let go of the showroom door. Once the door to the showroom closed, Officer Scott heard two shots coming from the showroom. He testified Mr. Hall was the only person he saw in the showroom before the door closed. After the incident, Officer Scott observed a Ruger handgun in the foyer and identified it as the gun that Mr. Hall had carried.

¶ 12 Chicago police officer Jorge Cerda testified that at approximately 8:40 p.m. on August 2, 2010, he responded to a flash message reporting an armed robbery at the Fullerton store and describing two black males running northbound on Pulaski Road, one wearing a white T-shirt. Officer Cerda saw, about one block from the T-Mobile store, a black man in a white shirt, whom he identified at trial as Mr. Winfield. He stopped Mr. Winfield and noticed that Mr. Winfield was bleeding from his right hand and had what appeared to be blood on his shirt. Officer Cerda placed Mr. Winfield in handcuffs and asked him what happened. Mr. Winfield said he had been

shot by "some white guy."

¶ 13 Chicago police detective Ronald Schmuck testified that he responded to the scene and soon learned that a potential suspect had been found. As he walked northbound on Pulaski Road, he saw a hat with attached fake dreadlocks lying on the street about a half of a block north of Fullerton Avenue. He found Mr. Winfield, whom he determined was the possible offender, approximately one block further north. Detective Schmuck performed a show-up with each of the three T-Mobile employees. Only Mr. Valentin positively identified Mr. Winfield as one of the offenders. All three employees positively identified the hat with the attached fake dreadlocks.

¶ 14 Mr. Winfield was eventually taken to the hospital to be treated for his injuries. There, Chicago police detective Richard Green took Mr. Winfield's post-arrest statement. Detective Green testified that Mr. Winfield told the detective that he and Mr. Hall wanted to rob the Fullerton store. On the day of the attempted robbery, Mr. Hall picked up Mr. Winfield and they parked in the parking lot of the Fullerton store. Mr. Hall had a black semiautomatic weapon as he exited the vehicle. He told Mr. Winfield to "watch the door" and ensure that they did not get locked in. Mr. Winfield followed closely after Mr. Hall and stood by the door. As he stood there, Mr. Winfield saw Mr. Hall, armed with the handgun, walking employees into a back room. Mr. Winfield then heard someone yelling, followed by gunshots, and felt a pain in his right hand. Mr. Winfield fled the store, running northbound on Pulaski Road, and was soon caught by police. Mr. Winfield denied having a gun or wearing a wig.

¶ 15 Forensic evidence was presented that two of the six cartridges recovered were fired from the Ruger firearm that Officer Scott collected at the scene and four were fired from Officer Scott's gun. The police testified to a trail of what appeared to be blood going north on Pulaski Road. Approximately one-half of a block north of Fullerton Avenue on Pulaski Road, the police

found a parked white Pontiac with what appeared to be blood droplets on the passenger side, and just behind that car the police found and recovered the hat with dreadlocks. Across the street from the Pontiac the police observed a latex glove with what appeared to be blood on it and a tear between the index and middle finger. A little further north on Pulaski Road was a white T-shirt with what appeared to be blood on it. Upon following this "sporadic" blood trail, the police came upon a large fence and a lot with several vehicles parked inside. A Smith & Wesson .45-caliber handgun was observed on the ground just inside the fence with what appeared to be blood on it. The hat with dreadlocks, latex glove, white T-shirt, and handgun were all recovered by the police.

¶ 16 The parties stipulated that, if called, a forensic scientist would testify that he swabbed the blood stains on the Smith & Wesson handgun and preserved them for DNA analysis, and that the swabs taken from the Smith & Wesson had a mixture of DNA profiles, one of which matched Mr. Winfield's DNA profile.

¶ 17 The State also entered into evidence two certified copies of prior convictions for Mr. Winfield in support of the charge of being an armed habitual criminal.

¶ 18 C. The Trial Court's Findings

¶ 19 At the close of the State's case, Mr. Winfield moved for a directed verdict, which the court granted only with respect to the attempted murder charges. Mr. Winfield did not testify.

¶ 20 The trial court found Mr. Winfield guilty of two counts of aggravated kidnapping based on possession of a firearm during the commission of a kidnapping, three counts of attempted armed robbery while armed with a firearm, one count of being an armed habitual criminal, and one count of unlawful use of a weapon by a felon. The court specifically noted that it found the testimony of Officer Scott and the three T-Mobile employees to be credible. The trial court found

Mr. Winfield not guilty of aggravated discharge of a firearm and aggravated assault.

¶ 21 D. Sentencing

¶ 22 At the first day of the sentencing hearing, the trial court asked counsel for Mr. Winfield whether the pre-sentence investigation (PSI) report needed "any additions, corrections, or deletions," in response to which counsel requested that the report be corrected to indicate Mr. Winfield was a "former" Vice Lord. At that time, the court asked "Anything else?" and defense counsel responded, "That is it, your Honor."

¶ 23 In aggravation, the State argued that Mr. Winfield was eligible to be sentenced as a Class X offender for the offense of attempted armed robbery because he had two prior felony convictions that were either Class 1 or 2. 730 ILCS 5/5-4.5-95 (West 2014) ("When a defendant, over the age of 21 years, is convicted of a Class 1 or Class 2 felony, *** after having twice been convicted *** of an offense that contains the same elements as an offense now *** classified in Illinois as a Class 2 or greater Class felony, *** that defendant shall be sentenced as a Class X offender."). The State entered two certified copies of convictions, stating, "In the 99 CR 13447, he was convicted of a 401-D, which is a—looks like a Class 1 felony. In 97 CR 24973, he was also convicted of a Class 1 felony."

¶ 24 In mitigation for Mr. Winfield, defense counsel took issue with the certified copy of conviction in case No. 99 CR 13447, arguing that the sentence in that case was for 18 months' probation, so it must have either been a Class 4 felony or an illegal sentence, and thus could not qualify him for sentencing as a Class X offender.

¶ 25 The court then stated:

> "I have a question on the exhibits that the State has presented under the name of Dub Mayfield. In looking at that certification, Defendant was sentenced

> to 18 months probation on Count 3. Count 3 was section 720 ILC*** section 570/401D. So the question I have, back in 1999, what class felony was that and whether or not that was probationable?"

¶ 26 And, then, during a further discussion of Mr. Winfield's possible sentences, the parties and the court discussed corrections to the PSI report:

> "[THE STATE]: I apologize, Judge. 04 CR 15304, the clerk is printing out a certified copy of conviction. In that case, Jarvis Winfield pled guilty to delivery of controlled substance, so the PSI is wrong. ***
>
> THE COURT: Well, I tell you what we're going to do. We're going to get a date. I'd like for the parties to go through those PSIs. My confidence is now shaken in terms of the accuracy of these—
>
> [THE STATE]: Convictions.
>
> THE COURT: —convictions. *** Why don't we get a date, go through. All sides can go through the PSI now that we have them and go through and confirm or deny some of that information."

¶ 27 At the next court date, the State told the trial court that after reviewing the PSI report, it realized that it had entered the wrong certified copy of conviction for one of the cases it had relied on at trial to show that Mr. Winfield was an armed habitual criminal. Based on this concession, the court vacated its finding that Mr. Winfield was guilty of being an armed habitual criminal.

¶ 28 In reference to the Class X sentencing however, the State argued that regardless of whether the probation Mr. Winfield received in case No. 99 CR 13447 was a legal sentence, it was clearly a Class 2 felony conviction and that Mr. Winfield therefore had two prior convictions

for Class 2 or higher felonies, making him Class X eligible. In response, defense counsel argued that Mr. Winfield did not have the two necessary prior Class 2 or higher felony convictions because, in case No. 99 CR 13447, the probation was "either an illegal sentence which means it could be void or it's some clerical error and it was really a Class 4 felony, thereby making Mr. Winfield eligible for probation at that time."

¶ 29 The court rejected defense counsel's argument and sentenced Mr. Winfield as a Class X offender to 25 years for attempted armed robbery. The court also sentenced Mr. Winfield to 25 years on the aggravated kidnapping while armed with a firearm and sentenced him for the unlawful use of a weapon offense. All sentences are to be served concurrently.

¶ 30 At the hearing on the motion to reconsider, counsel for Mr. Winfield once again argued that Mr. Winfield was not eligible for Class X sentencing because the sentence in case No. 99 CR 13447 was probation, so it could not have been for a Class 2 or higher felony. The court denied the motion.

¶ 31 II. JURISDICTION

¶ 32 Mr. Winfield's motion to reconsider his sentence was denied on June 17, 2015, and he timely filed his notice of appeal that same day. This court has jurisdiction pursuant to article VI, section 6 of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6) and Illinois Supreme Court Rules 603 and 606, governing appeals from final judgments of conviction in criminal cases (Ill. S. Ct. R. 603 (eff. Feb. 6, 2013), R. 606 (eff. Dec. 11, 2014)).

¶ 33 III. ANALYSIS

¶ 34 A. Aggravated Kidnapping

¶ 35 Mr. Winfield argues that his conviction for aggravated kidnapping should be reversed because the kidnapping was incidental to the attempted armed robbery, for which he was also

convicted. A kidnapping occurs when a person knowingly by force or threat of imminent force carries a person from one place to another with intent to secretly confine that person against his will. 720 ILCS 5/10-1(a)(2) (2010). When considering whether a kidnapping occurred, Illinois courts apply the *Levy-Lombardi* doctrine, which states that "a defendant cannot be convicted of kidnapping where the movement or confinement of the victim was merely incidental to another crime, such as robbery, rape, or murder." *People v. Eyler*, 133 Ill. 2d 173, 199 (1989) (citing *People v. Levy*, 204 N.E.2d 842 (N.Y. App. 1965); *People v. Lombardi*, 229 N.E.2d 206 (N.Y. App. 1967)). This doctrine ensures that kidnapping convictions are not sustained when the asportation (carrying away) or confinement " 'constitute[s] only a technical compliance with the statutory definition but is, in reality, incidental to another offense.' " *Id.* at 200 (quoting *People v. Enoch*, 122 Ill. 2d 176, 197 (1988)).

¶ 36 Our supreme court has approved use of a four-factor test to determine whether a kidnapping is incidental to an offense. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225-26 (2009). Those factors are (1) the duration of the detention or asportation; (2) whether the detention or asportation occurred during the commission of a separate offense; (3) whether the asportation or detention was inherent in the separate offense; and (4) whether the asportation or detention created a significant danger to the victim independent of that posed by the separate offense. *Id.* The court has also made clear—contrary to Mr. Winfield's insistence that we consider this issue *de novo*—that in applying this test we must defer to the trier of fact and affirm if any rational trier of fact could have found Mr. Winfield guilty of a kidnapping that was independent from the armed robbery. *Id.* at 227.

¶ 37 Here, the duration of the movement and confinement of the employees was brief and the kidnapping occurred during the commission of an attempted armed robbery. However, neither of

these factors is determinative. See, *e.g.*, *People v. Ware*, 323 Ill. App. 3d 47, 54 (2001) ("a kidnaping conviction is not precluded by the brevity of the asportation or the limited distance of the movement."); *People v. Thomas*, 163 Ill. App. 3d 670, 678 (1987) (this factor "also does not preclude a kidnapping conviction").

¶ 38 The third factor weighs in favor of the State because the movement and confinement of the individuals were not inherent to the crime of attempted armed robbery. "[I]n order for the asportation or detention to be inherent in a separate offense, it must constitute an element of that offense." *People v. Quintana*, 332 Ill. App. 3d 96, 108 (2001). The movement and confinement of individuals are not elements of an attempted armed robbery and Mr. Winfield does not suggest otherwise. He instead argues that the indictment itself charging Mr. Winfield with attempted armed robbery included taking the employees to the back room as a substantial step toward the robbery. However, an attempted armed robbery occurs when a person knowingly takes a substantial step toward taking property from the person or presence of another through use of force or by threatening imminent use of force while armed with a firearm. 720 ILCS 5/8-4, 18-1(a), 18-2(a)(2) (West 2010). Armed robberies can be completed or attempted without moving or confining anyone, and even if the manager was needed to open the safe in the back room, the other employees surely could have been left in the showroom while the safe was being opened. As the trial court pointed out, "if the motive was just to rob the store, to open the safe, why not just bring the manager back?"

¶ 39 The final factor, too, weighs in the State's favor, because the movement and confinement of the employees posed a significant danger to them that was separate from the attempted armed robbery. In *People v. Lloyd*, this court held that a kidnapping posed a significant and independent danger to the victim when the victim was moved from a public area into an abandoned

apartment, because the confinement made it less likely the victim would be seen by a passerby or could signal for help. *People v. Lloyd*, 277 Ill. App. 3d 154, 164-65 (1995). Similarly, here, the movement and confinement of the employees to a private back room posed an increased risk to their safety. The fortuitous presence of Officer Scott in the back room does not negate the significant and independent increased danger to the employees resulting from their confinement.

¶ 40 The two factors favoring the State are compelling reasons to sustain a separate kidnapping conviction. Kidnapping is not inherent in the crime of attempted armed robbery and the kidnapping in this case significantly increased the danger to the employees. Overall, the application of the *Levy-Lombardi* test supports Mr. Winfield's separate convictions for aggravated kidnapping.

¶ 41 B. Sentencing

¶ 42 Mr. Winfield argues that he should not have been sentenced as a Class X offender because one of the two predicate offenses on which the State relied to support that sentencing classification was a conviction for "Dub Mayfield," not Jarvis Winfield.

¶ 43 The trial court sentenced Mr. Winfield as a Class X offender based on two certified dispositions of prior conviction, including one under the name of "Dub Mayfield" for a Class 2 felony in case No. 99 CR 13447. Mr. Winfield argues that, because his name does not match the name on the certified conviction, no presumption of identity existed. Mr. Winfield further argues that the State failed to present any other evidence showing that he and Dub Mayfield are the same person. Mr. Winfield claims that the court thus erred in relying on that disposition to sentence him as a Class X offender. In response, the State argues that a presumption of identity did arise, and that Mr. Winfield failed to rebut that presumption.

¶ 44 We do not agree with the State that any presumption of identity arose in this case. Such a

presumption only arises when a defendant has the same name as that appearing on a certified copy of a prior conviction. *People v. Moton*, 277 Ill. App. 3d 1010, 1012 (1996). Here, Jarvis Winfield is clearly not the same name as Dub Mayfield. But despite the lack of such a presumption here, under the specific circumstances of this case, it is apparent that Mr. Winfield acquiesced to the State's identifying him as Dub Mayfield and relying on a conviction for Dub Mayfield that was included in the PSI report.

¶ 45 At the first day of the sentencing hearing, when the trial court asked whether defense counsel had any changes to the PSI report, counsel only requested a change with respect to the timing of Mr. Winfield's gang involvement. Defense counsel did not ever suggest that Mr. Winfield and Dub Mayfield were not the same person, or request that the State provide evidence proving that they were, or argue that Mr. Winfield was not the person who committed the crime in case No. 99 CR 13447. The PSI report says that Mr. Winfield was convicted of a felony in case No. 99 CR 13447 and the criminal history report, attached to the PSI report, lists "Mayfield, Dub D" as one of Mr. Winfield's aliases and again lists case No. 99 CR 13447 as a case in which he was previously convicted as "Mayfield, Dub D."

¶ 46 While defense counsel did argue that the conviction in case No. 99 CR 13447 was not a qualifying felony because it might have been an illegal sentence or a Class 4 felony, counsel never challenged the information in the PSI report connecting Mr. Winfield to the name Dub Mayfield or to case No. 99 CR 13447. Our supreme court has held that a defendant's "failure to object to the sufficiency of the reports at the sentencing hearing results in waiver of the issue on review." *People v. Williams*, 149 Ill. 2d 467, 495 (1992). In *People v. Matthews*, 362 Ill. App. 3d 953, 967 (2005), we noted that section 5-3-4(b)(2) of the Unified Code of Corrections (730 ILCS 5/5-3-4(b)(2) (West 2004)) requires that both parties receive the PSI report "at least three days

prior to sentencing." We explained that "[o]ne of the purposes of this advance notice is to allow the parties to bring any errors in the report to the court's attention, so that the failure to object results in *a concession of its accuracy and the waiver of any claims of inaccuracy*." (Emphasis added.) *Id.* We then held that because the defendant in *Matthews* failed to object to the PSI report in the trial court, the defendant "conceded the accuracy of his PSI as well as explicitly conceding the appropriateness of his Class X sentence for purposes of appeal." *Id.* Under these circumstances, we cannot say that the trial court erred in relying on the information in the PSI report or on the certified copy of the conviction in case No. 99 CR 13447.

¶ 47 Alternatively, Mr. Winfield argues that his trial counsel was ineffective for failing to object to the certified disposition of conviction on the basis of identity. To prove a claim of ineffective assistance of trial counsel, a defendant must show both that his counsel's performance was deficient and that he was prejudiced by that deficient performance. *People v. Banks*, 2016 IL App (1st) 131009, ¶ 123 (citing *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984)). If a defendant does not make the necessary showing for either prong, his claim fails. *Id.* On this record, Mr. Winfield cannot show that he was prejudiced by trial counsel's performance at the sentencing hearing, and therefore his ineffective assistance of counsel claim fails.

¶ 48 "To establish prejudice, a defendant must show there is a reasonable probability that, but for counsel's insufficient performance, the result of the proceeding would have been different." *Id.* More specifically, "the defendant must show that the probability that counsel's errors changed the outcome of the case is sufficient to undermine confidence in the outcome." (Internal quotation marks omitted.) *People v. McCarter*, 385 Ill. App. 3d 919, 935 (2008).

¶ 49 To succeed on this claim, Mr. Winfield would have to show that, if his counsel had objected to the certified disposition for Dub Mayfield in case No. 99 CR 13447 on the basis of

identity, then that prior conviction could not have been relied on to make him Class X eligible. But if counsel for Mr. Winfield had made such an objection, the State then would have had an opportunity to introduce other evidence to substantiate that Mr. Winfield was in fact Dub Mayfield. *Moton*, 277 Ill. App. 3d at 1012. Thus, at this point, the only way Mr. Winfield could show that he was prejudiced by counsel's failure to object to the admission of that certified disposition of conviction is by showing that he is not, in fact, Dub Mayfield. The record on appeal contains no evidence on which we could make such a finding. If Mr. Winfield has evidence demonstrating that he is indeed not the Dub Mayfield who was convicted in case No. 99 CR 13447, the avenue available for him to raise this issue is a postconviction petition.

¶ 50 VI. CONCLUSION

¶ 51 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 52 Affirmed.