2016 IL App (2d) 140911-U
No. 2-14-0911
Order filed November 22, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 13-CF-1368
RONALDO C. CRAWFORD,	)	Honorable George J. Bakalis,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Schostok and Justice McLaren concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction of armed robbery was affirmed. Defendant did not show prejudice so as to maintain a claim of ineffective assistance of counsel resulting from an alleged Confrontation Clause violation. The State proved beyond a reasonable doubt that a certain bludgeon introduced at trial was one of the objects brandished by the co-defendants during the robbery. Defendant's sentence of 30 years' imprisonment was not excessive, and the trial court did not err in imposing the same sentence on defendant as it did on the co-defendant.

¶ 2 Following a bench trial, defendant, Ronaldo Crawford, was convicted of armed robbery (720 ILCS 5/18-2(a)(1) (West 2012)) and aggravated robbery (720 ILCS 5/18-1(b)(1) (West 2012)). He was tried jointly with his brother, Antuoine Adams. Defendant and Adams were

represented by separate trial counsel, and neither requested a severance. The court merged the aggravated robbery count into the armed robbery count and sentenced both men to 30 years' imprisonment. Defendant and Adams separately appealed. The present appeal involves only defendant. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant and Adams committed a string of robberies in 2013 that targeted electronics stores. This case involves the June 5, 2013, robbery of a Radio Shack in Lombard, Illinois. Defendant and Adams were charged by indictment with armed robbery in that, "while armed with a dangerous weapon, a bludgeon, [they] knowingly took property, being United States Currency, cellular phones, and various other electronic merchandise from the person or presence of Brad M. Kruckenberg by the use of force or by threatening the imminent use of force." They were also charged with aggravated robbery in that, "while indicating verbally or by [their] actions to Brad M. Kruckenberg that [they] had a firearm, [they] knowingly took property, being United States Currency, cellular phones, and various other electronic merchandise from the person or presence of Brad M. Kruckenberg by the use of force or by threatening the imminent use of force."

¶ 5 At trial, defendant did not dispute that he participated in the June 5, 2013, robbery and that he and Adams brandished objects resembling handguns such that a conviction for aggravated robbery, a Class 1 felony (see 720 ILCS 5/18-1(c) (West 2012)), was appropriate. Instead, his defense was that the State could not prove beyond a reasonable doubt that he committed armed robbery, a Class X felony (see 720 ILCS 5/18-2(b) (West 2012)). Specifically, he contended that the State could not link a particular bludgeon that was found in Adams' car on June 27, 2013, to the June 5 robbery. Therefore, he argued, the State could not prove that the

items that he and Adams brandished during the robbery actually had the physical characteristics of bludgeons. See *People v. Ross*, 229 Ill. 2d 255, 276 (2008) (explaining that one way the State may prove that an object is a "dangerous weapon" is by showing that it was "used or capable of being used as a club or bludgeon.").

¶ 6 Kruckenberg testified that he was working alone at the Radio Shack in Lombard on June 5, 2013, when two men entered the store shortly before 1 p.m. One man was wearing a green sweater and the other was wearing a dark sweater. The parties stipulated at trial that defendant wore the green sweater and Adams wore the dark sweater. According to Kruckenberg, defendant first asked him if he had a particular cell phone in stock. Kruckenberg did not have that phone in stock, but he checked on whether he could obtain one. Defendant then pulled out what Kruckenberg believed was a gun and placed it on the counter, telling him to take the money out of the register and place it in a bag. Kruckenberg complied, and Adams instructed him to put the bills in the bag and leave the change. Kruckenberg was then instructed to grab five large bags from behind the counter and proceed to the back area of the store. Adams directed him to remove "high volume merchandise" such as cell phones, laptops, cameras, and GPS units from a cage. As Kruckenberg was doing this, he noticed that Adams had what appeared to be a gun in his left hand. Once Kruckenberg finished retrieving merchandise from the back area, defendant and Adams led him to a bathroom and told him to count to 300 or 500. While Kruckenberg was in the bathroom, the rear door to the store opened and he heard a car drive away.

¶ 7 According to Kruckenberg, the two guns that he saw during the robbery looked like black handguns. During Kruckenberg's testimony, the State played surveillance footage of the robbery that was captured by four video cameras throughout the store. The surveillance video, along with two still photographs taken from the video, showed that Adams brandished an object shaped

like a handgun and which he held like a handgun. Defendant also briefly brandished an object during the robbery, although that object was not as distinct in the video and a photograph taken from the video as the object in Adams' hand. The State then questioned Kruckenberg about People's Exhibit 20, which was a Glock replica air soft firearm that had been recovered by police from Adams' vehicle 22 days after the Lombard robbery. Kruckenberg said that People's Exhibit 20 was consistent with the guns that he observed during the robbery.

¶ 8 On cross-examination, Kruckenberg acknowledged that defendant and Adams were calm during the robbery and that they never grabbed him or yelled at him. Nor did they threaten to use the guns if he did not comply with their orders. Kruckenberg testified that police officers had not asked him to identify People's Exhibit 20 during their investigation of the case. Furthermore, Kruckenberg explained that People's Exhibit 20 looked similar to what he saw on the day of the robbery, but he could not identify it as being one of the objects that defendant or Adams had in their hands.

¶ 9 Michael Heene, a detective with the Des Plaines police department, testified that he responded to a call at a vacant parking lot on the south side of Chicago at 2:30 p.m. on June 27, 2013, as part of a separate investigation. Once there, he observed two vehicles: a gold GMC SUV and a black four-door Infinity sedan. He also observed that three male subjects were in custody on the ground. After speaking with other officers at the scene, Heene looked inside the Infinity and saw electronics as well as what he believed was a Glock semi-automatic pistol in the back seat. In the course of ensuring that the pistol was unloaded, he determined that it was actually a replica air soft firearm. Heene testified that his own service weapon was a Polymer Springfield XD, which is similar to a Glock firearm. According to Heene, the item recovered from the back seat of the Infinity was similar in weight to his own service weapon. He had

initially thought that the item in the car was an actual firearm based on its weight and characteristics, until he removed the magazine and determined that it did not handle live ammunition. Heene said that People's Exhibit 20 was the replica gun that he found in the Infinity.

¶ 10 Heene also testified that he spoke with Adams for the first time in the back of a Des Plaines police vehicle. Adams told Heene that he owned the Infinity. Heene also spoke with defendant, who said that the gold SUV belonged to him. According to Heene, the Infinity was towed to a garage and searched. Inside the car he found new electronics, cell phones, and tablet computers, along with the air soft pistol that he had noticed in the car at the scene of the arrests. Heene also recovered six large Radio Shack shopping bags from the trunk of the Infinity. The State introduced into evidence records from the Secretary of State showing that the Infinity was registered to Adams.

¶ 11 Heene further testified that he spoke with Adams again at the Des Plaines police station at 12:30 a.m. on June 28, 2013. According to Heene, Adams told him that he was in the black Infinity on June 27, 2013. When asked about the Glock replica found in the Infinity, Adams told Heene that he had purchased that item online along with another identical item and two air soft rifles approximately one year before.[1] According to Heene, Adams did not know where the second air soft pistol was. Heene testified that Adams acknowledged having held the air soft Glock replica pistol on June 27, 2013. Adams also admitted to Heene that he was involved in the Lombard Radio Shack robbery.

[1] Defendant's counsel did not raise a Confrontation Clause objection when this statement or any of Adams' other statements were introduced.

¶ 12 Heene further testified about his conversation with defendant at the Des Plaines police station at 4:40 a.m. on June 28, 2013. According to Heene, defendant acknowledged having been in Adams' Infinity on June 27. Defendant also admitted to being involved in the Lombard robbery.

¶ 13 Tiffany Wayda, a detective with the Du Page County sheriff's office, was the State's final witness. She identified surveillance footage taken on June 5, 2013, from a camera at M.S. Jewelers, a store that was near the Radio Shack that was robbed. The footage showed a black car driving in the area of the Radio Shack. Wayda further testified that she had the opportunity to interview both Adams and defendant at the Des Plaines police station on June 28, 2013. According to Wayda, Adams told her that he was involved in the June 5 robbery. Wayda testified that she showed Adams a bulletin containing certain still frames from the surveillance footage of the June 5 robbery. Adams identified both defendant and himself in that bulletin. Furthermore, Adams identified the black vehicle shown in the bulletin as his own vehicle, acknowledging that it was the same vehicle that was currently in the custody of the Des Plaines police department. Adams admitted that he committed the Lombard Radio Shack robbery with defendant, but he wanted the police to know that he never carries a real gun and that he was never violent toward any victims.

¶ 14 Wayda explained that following her conversation with Adams, she spoke with defendant. She informed him that he had been identified in the surveillance footage and photos by Adams and another suspect. Defendant then admitted to her that he was present with Adams during the armed robbery, and he identified himself in the photos. Defendant told Wayda that he never carries a real gun, and he wanted to apologize if any victims were traumatized.

¶ 15 Wayda testified that she was alerted that Des Plaines police located the replica gun that was introduced into evidence as People's Exhibit 20. She had the opportunity to view People's Exhibit 20 and to compare it to a service weapon that one of her colleagues carried. Wayda identified People's Exhibit 21 as a photograph comparing her colleague's .40 caliber Glock 22 handgun with the air soft pistol that was found in Adams' car. The air soft pistol depicted in People's Exhibit 21 was a very realistic-looking replica of a handgun. Wayda explained that she held both her colleague's real handgun and the replica found in Adams' car, and they were almost identical in weight.

¶ 16 The State rested its case, and defendant moved for a directed finding on both counts of the indictment. However, he made an argument only on the armed robbery count. Defendant emphasized that the State alleged that a bludgeon, not a firearm, was used in the commission of the robbery. He noted that People's Exhibit 20, the air soft pistol, was found in Adams' vehicle 22 days after the Lombard robbery and that the police never asked him or Adams whether that item was used in the robbery. Defendant acknowledged that he and Adams used items that looked like handguns during the Lombard robbery, but he urged that there was no evidence that People's Exhibit 20 was used in the robbery. According to defendant, the items used in the commission of the crime could have been plastic guns or even bars of soap. Adams joined in defendant's motion for a directed finding.

¶ 17 The State responded that the evidence must be considered in context. This was a robbery, the State argued, and defendant and Adams used realistic guns, not bars of soap. Moreover, a realistic-looking gun was found in Adams' car when he was arrested. The State also noted that there was evidence that defendant and Adams had been in Adams' car on the day of the arrest and that Adams had held the gun that day. Moreover, the State noted that People's

Exhibit 20 matched Kruckenberg's description about items that looked like real guns. The State also recalled Adams' statement that he purchased two air soft guns online over a year before the robbery. Furthermore, the State noted that People's Exhibit 20 was found in the same car where police found cell phones that had been "hoisted from the Lombard robbery."

¶ 18 The court denied the motions for directed findings, concluding that there was circumstantial evidence that the replica gun found in Adams' car was used in the commission of the June 5, 2013, robbery. In its ruling, the court mentioned that Adams made a statement that "he purchased two of these weapons approximately a year ago, which means he would have owned them at the time in question." The court also recalled that Kruckenberg testified that People's Exhibit 20 resembled what he saw during the robbery. Moreover, the court said that one of the photographs from the surveillance video where Adams was "holding the gun at his side" showed "a strong resemblance" to the air soft gun.

¶ 19 Neither defendant nor Adams presented any evidence. In closing arguments, the parties repeated many of the points that they made during arguments on the motions for directed findings. Defendant conceded that he committed aggravated robbery, but he argued that the State did not prove that the items used in the robbery were bludgeons so as to prove the offense of armed robbery. Adams likewise confined his arguments to the armed robbery count.

¶ 20 The trial court found defendant and Adams guilty of armed robbery and aggravated robbery, but it merged the aggravated robbery convictions into the armed robbery convictions. The court found that the State proved by circumstantial evidence that People's Exhibit 20 was used in the robbery, mentioning that: (1) Kruckenberg testified that People's Exhibit 20 looked like what he saw during the robbery; (2) one of the still photographs taken from the surveillance footage showed Adams carrying a weapon by his side that had a "strong resemblance" to

People's Exhibit 20; (3) People's Exhibit 20 was found in Adams' vehicle along with items that the court inferred were related to the Lombard robbery; (4) both defendant and Adams made statements that they never use a real gun; and (5) Adams admitted that he "purchased two of these weapons," and the video clearly showed that both defendant and Adams had weapons.

¶ 21 The trial court denied the posttrial motions and proceeded to sentencing. The court sentenced both defendant and Adams to 30 years' incarceration. The court subsequently denied defendant's motion to reconsider the sentence. Defendant timely appealed.

¶ 22 II. ANALYSIS

¶ 23 1. Ineffective Assistance of Counsel

¶ 24 Defendant first argues the he was denied his Sixth Amendment rights to confrontation and effective assistance of counsel because Adams' incriminating statement was introduced without objection and was explicitly used by the trial court to support the finding of guilt. Defendant focuses exclusively on Adams' statement to Detective Heene that, approximately one year before the June 2013 police interview, he had purchased People's Exhibit 20 online along with another identical item.

¶ 25 Ineffective assistance of counsel claims are governed by the standards set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). A defendant must show both that his counsel's performance was deficient and that such deficiency prejudiced the defense. *Strickland*, 466 U.S at 687. If there is no prejudice, there is no need for the court to consider whether counsel's performance was deficient. *Strickland*, 466 U.S. at 697. To demonstrate prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "Reasonable probability" means "a probability sufficient to undermine confidence in the

outcome." *Strickland*, 466 U.S. at 694. Where, as here, the defendant did not raise his ineffective assistance claim in the trial court and the facts are undisputed, our review is *de novo*. *People v. Wilson*, 392 Ill. App. 3d 189, 197 (2009).

¶ 26 A criminal defendant has the constitutional right "to be confronted with the witnesses against him." U.S. Const., amend. VI. The evil that the Confrontation Clause seeks to address is the "use of *ex parte* examinations as evidence against the accused." *Crawford v. Washington*, 541 U.S. 36, 50 (2004). More specifically, the primary object of the Sixth Amendment is testimonial hearsay, which includes statements that are made to law enforcement during interrogations. *Crawford*, 541 U.S. at 53. A testimonial statement made by a declarant who does not testify at trial is admissible only if the declarant is unavailable and the defendant has had a prior opportunity to cross-examine the declarant. *Crawford*, 541 U.S. at 59.

¶ 27 When multiple defendants are tried jointly before a jury, the risk that the statements of one defendant who does not testify will be used against other defendants is so great that even a limiting instruction may not eliminate the prejudice. See *Bruton v. United States*, 391 U.S. 123, 126 (1968). Unlike a jury, however, a trial judge is deemed to be "capable of compartmentalizing its consideration of evidence." *People v. Schmitt*, 131 Ill. 2d 128, 137 (1989). Accordingly, in a bench trial, the reviewing court "must presume the trial court considered only competent evidence unless the contrary affirmatively appears of record or the trial court, confronted with serious improprieties in a case where a defendant's guilt is not manifest, fails to comment on the irregularities or even indicate an awareness thereof." *Schmitt*, 131 Ill. 2d at 138-39.

¶ 28 However, a Confrontation Clause violation does not justify a new trial if the error was harmless beyond a reasonable doubt. See *Lee v. Illinois*, 476 U.S. 530, 547 (1986) (although

there was a Confrontation Clause violation, the matter was remanded to the Illinois courts to determine whether the error was harmless); *People v. Patterson*, 217 Ill. 2d 407, 437 (2005) (Confrontation Clause violation was harmless beyond a reasonable doubt); *People v. Duff*, 374 Ill. App. 3d 599, 604-06 (2007) (Confrontation Clause violation was harmless beyond a reasonable doubt). Courts have recognized three approaches for determining whether a Confrontation Clause violation was harmless: "(1) focusing on the error to determine whether it might have contributed to the conviction, (2) examining the other evidence in the case to see if overwhelming evidence supports the conviction, and (3) determining whether the improperly admitted evidence is merely cumulative or duplicates properly admitted evidence." *Patterson*, 217 Ill. 2d at 428. A Confrontation Clause violation may be harmless even where the State's evidence is circumstantial. See *Patterson*, 217 Ill. 2d at 435 (" 'A conviction can be sustained upon circumstantial evidence as well as upon direct, and to prove guilt beyond a reasonable doubt does not mean that the jury must disregard the inferences that flow normally from the evidence before it.' " (quoting *People v. Williams*, 40 Ill. 2d 522, 526 (1968))).

¶ 29 Defendant and the State disagree as to whether there was a Confrontation Clause violation. We need not resolve this dispute, because any such violation was harmless beyond a reasonable doubt. Accordingly, defendant has not demonstrated prejudice, and his ineffective assistance of counsel claim fails.

¶ 30 The State charged defendant with armed robbery based on the possession of a bludgeon during the commission of the offense. See 720 ILCS 5/18-2(a)(1) (West 2012) (A person commits armed robbery when he or she commits a robbery and "carries on or about his or her person or is otherwise armed with a dangerous weapon other than a firearm."). The trier of fact may infer that an object that was brandished during the robbery was a "dangerous weapon" for

purposes of the armed robbery statute if the State presents evidence of the physical characteristics of the object. See *Ross*, 229 Ill. 2d at 276 (the trier of fact may make an inference of dangerousness if there is evidence that the object was "used or capable of being used as a club or bludgeon"); *People v. Thorne*, 352 Ill. App. 3d 1062, 1072 (2004) ("In all the cases that have found guns that are incapable of firing bullets to be dangerous weapons under the armed robbery statute, there was either evidence (1) that the gun was actually used in a dangerous manner, or (2) that the character of the weapon was such that it could conceivably be used as a bludgeon."); *People v. Lindsay*, 263 Ill. App. 3d 523, 530 (1994) (9-inch metal object with a jagged edge "conceivably could be used as a bludgeon" such that it could be considered a dangerous weapon). The State's theory at trial was that People's Exhibit 20, a replica air soft pistol that was recovered from Adams' car approximately three weeks after the robbery at issue, was one of the items that had been brandished by the co-defendants during the robbery. Defendant did not dispute at trial, nor does he dispute now, that People's Exhibit 20 constituted a bludgeon. He likewise does not dispute that he committed the robbery in question. Instead, his defense was that the State did not provide sufficient evidence to link this bludgeon to the robbery.

¶ 31 Even without Adams' statement to police that he purchased People's Exhibit 20 and another identical item prior to the robbery, the other circumstantial evidence connecting this particular bludgeon to the crime was overwhelming. The surveillance footage and two photographs taken from the video clearly depicted Adams carrying an object during the robbery that was shaped like a handgun. The video and a photograph from the video likewise showed that defendant briefly held an object in his hand during the robbery. Additionally, Kruckenberg insisted that the items he saw defendant and Adams carrying looked like real handguns, and he said that People's Exhibit 20 was similar to what he had seen during the robbery. Furthermore,

People's Exhibit 20—an item that was so realistic-looking that even Heene, a police officer, initially mistook it for an actual firearm—was recovered from Adams' vehicle only 22 days after the robbery. Radio Shack shopping bags with items relating to the robbery were also recovered from the trunk of Adams' vehicle at the same time. Moreover, defendant admitted to police that he was involved in the June 5, 2013, robbery. Defendant further acknowledged that he had been in Adams' vehicle on June 27, the day that People's Exhibit 20 was discovered. Defendant even insisted to police that he never carries a real gun, which further supports the inference that the replica weapon found in Adams' car was connected to the Lombard robbery.

¶ 32 Defendant invites this court to speculate that he and Adams might have carried some other objects during the robbery that did not have the physical characteristics of a bludgeon. Nothing in the record supports such an inference. There is no reasonable probability that the outcome of the trial would have been different had the court not considered Adams' statement in question. Accordingly, defendant's ineffective assistance of counsel claim premised on a Confrontation Clause violation fails for lack of prejudice.

¶ 33 We granted defendant's motion for leave to cite *People v. Lucious*, 2016 IL App (1st) 141127, which was decided after briefing in the present case had been completed. In that case, defendants Lucious and Scott were charged with armed robbery, aggravated robbery, and aggravated unlawful restraint for stealing two backpacks from a woman in an alley. *Lucious*, 2016 IL App (1st) 141127, ¶ 1. To prove aggravated robbery, the State was required to show that the defendants indicated verbally or by their actions that they were armed with a firearm or other dangerous weapon. *Lucious*, 2016 IL App (1st) 141127, ¶ 1; 720 ILCS 5/18-1(b) (West 2012). At the defendants' joint bench trial, the victim testified that Lucious put a gun to her temple during the robbery. *Lucious*, 2016 IL App (1st) 141127, ¶ 9. The State introduced

evidence that both Lucious and Scott admitted to police that they committed the robbery. Specifically, Lucious said that he and Scott threw the victim to the ground and took her backpacks. *Lucious*, 2016 IL App (1st) 141127, ¶ 17. Lucious also told police that he had a cell phone on him during the robbery, although police did not find any cell phones or weapons when they apprehended the defendants. *Lucious*, 2016 IL App (1st) 141127, ¶¶ 14, 17. In addition to what Lucious told police, Scott volunteered that he told the victim, " 'don't make him [Lucious] shoot you.' " *Lucious*, 2016 IL App (1st) 141127, ¶ 18. Scott also told police that he did not know why he had said that during the robbery, because Lucious only had a cell phone on him. *Lucious*, 2016 IL App (1st) 141127, ¶ 18. At the close of the State's case, the court granted a directed finding on the armed robbery count. *Lucious*, 2016 IL App (1st) 141127, ¶ 19. Neither defendant testified or presented any evidence. *Lucious*, 2016 IL App (1st) 141127, ¶ 20.

¶ 34 In closing arguments, Lucious' counsel argued that the evidence supported only a charge of robbery, not aggravated robbery. *Lucious*, 2016 IL App (1st) 141127, ¶ 21. The State responded by noting that the victim testified that Lucious put a gun against her head and that Lucious told police that he had a cell phone on him during the robbery; therefore, according to the State, it was probably the cell phone that was put against the victim's head. *Lucious*, 2016 IL App (1st) 141127, ¶ 21. The State also recalled Scott's statement to police that he had told the victim not to make Lucious shoot her. *Lucious*, 2016 IL App (1st) 141127, ¶ 21. The trial court found both of the defendants guilty of aggravated robbery and unlawful restraint, citing Scott's statement as evidence in support of the aggravated robbery conviction. *Lucious*, 2016 IL App (1st) 141127, ¶ 22.

¶ 35 On appeal, Lucious argued that his trial counsel was ineffective for failing to raise a Confrontation Clause objection when the State introduced Scott's statement. *Lucious*, 2016 IL

App (1st) 141127, ¶ 28. The appellate court vacated the aggravated robbery conviction and remanded for a new trial. The court determined that counsel was deficient for failing to object to the use of Scott's statement because it "directly proved an essential element of aggravated robbery." *Lucious*, 2016 IL App (1st) 141127, ¶ 42. With respect to the issue of prejudice, the court found that an objection "would have significantly undermined the State's proof of aggravated robbery and created a reasonable probability that [Lucious] would have been acquitted of that charge." *Lucious*, 2016 IL App (1st) 141127, ¶ 46. Although the State emphasized that there was other evidence supporting the aggravated robbery charge—namely, the victim's testimony that Lucious pressed an object against her head—the court found that there were two problems with the State's argument. *Lucious*, 2016 IL App (1st) 141127, ¶ 47. First, Scott's statement that he told the victim not to make Lucious shoot her was direct evidence proving the aggravated robbery, whereas the evidence supporting a conclusion that Lucious put a cell phone against the victim's head was far less persuasive, because it was based on inferences created by piecing the evidence together. *Lucious*, 2016 IL App (1st) 141127, ¶ 48. Additionally, the fact that the trial court expressly relied on Scott's statement in finding Lucious guilty showed that there was "a reasonable probability that the outcome of [Lucious'] trial would have been different had the trial court not considered [Scott's] statement." *Lucious*, 2016 IL App (1st) 141127, ¶ 49.

¶ 36 *Lucious* is distinguishable. In that case, Scott's statement to police directly proved the offense of aggravated robbery. Additionally, absent Scott's statement, to find Lucious guilty of aggravated robbery, the trial court would have had to extrapolate from the evidence that Lucious put a cell phone to the victim's head, even though no cell phone was found on his person and the victim thought that Lucious used a gun rather than a cell phone. Although that may have been a

reasonable conclusion to draw from the evidence in *Lucious*, it was not the only reasonable conclusion. In contrast, Adams' statement to police that he purchased two air soft pistols approximately one year before the robbery was merely additional circumstantial evidence linking People's Exhibit 20 to the robbery. As explained above, even without Adams' statements, the only reasonable conclusion that could be drawn from the evidence presented was that defendant and Adams used People's Exhibit 20 while robbing the Lombard Radio Shack.

¶ 37 2. Sufficiency of the Evidence

¶ 38 In a very similar argument, defendant next contends that the State failed to prove beyond a reasonable doubt that People's Exhibit 20 was one of the weapons that he and Adams actually used during the robbery. As previously noted, a person commits armed robbery when he or she commits a robbery and "carries on or about his or her person or is otherwise armed with a dangerous weapon other than a firearm." 720 ILCS 5/18-2(a)(1) (West 2012). In evaluating the sufficiency of the evidence, "the proper 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." (Emphasis in original.) *People v. McCullough*, 2015 IL App (2d) 121364, ¶ 73 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). For all the reasons explained above, we must reject defendant's argument.

¶ 39 Moreover, defendant's attempt to analogize the matter to *In re Nasie M.*, 2015 IL App (1st) 151678, is unavailing. In *Nasie M.*, a juvenile who sustained gunshot wounds to his foot was charged with various gun offenses on the theory that he had accidentally shot himself. *Nasie M.*, 2015 IL App (1st) 151678, ¶ 5. Police located a spent shell casing in the vicinity of the shooting. *Nasie M.*, 2015 IL App (1st) 151678, ¶ 6. They then searched the juvenile's girlfriend's apartment and found a .38 caliber revolver. *Nasie M.*, 2015 IL App (1st) 151678,

¶ 6. However, that revolver did not contain any spent rounds, and a police witness testified that a revolver does not eject shell casings. *Nasie M.*, 2015 IL App (1st) 151678, ¶¶ 8, 10. When police first interviewed the juvenile, he allegedly admitted that he had accidentally shot himself in the foot and then brought the gun to his girlfriend's apartment; at trial he denied having made those statements. *Nasie M.*, 2015 IL App (1st) 151678, ¶¶ 7, 14. The juvenile was found guilty, but the appellate court reversed, holding that the State did not prove that he possessed a firearm at the time of the shooting. *Nasie M.*, 2015 IL App (1st) 151678, ¶ 3.

¶ 40 The present case is distinguishable from *Nasie M.* Unlike in that case, where there were no eyewitnesses to the crime, Kruckenberg testified that he saw what appeared to be firearms, and surveillance footage corroborated this. Furthermore, in *Nasie M.*, the weapon that was recovered from the juvenile's girlfriend's home contained no spent cartridges and was not the type of weapon that ejected cartridges, so it could not have been the weapon used in the shooting. In contrast, there was no evidence in the present case that People's Exhibit 20 could not have been used during the commission of the June 5, 2013, robbery. Under these circumstances, the trial court rationally found that the State proved the elements of armed robbery beyond a reasonable doubt.

¶ 41 3. Sentencing

Finally, defendant challenges his 30-year sentence of imprisonment on two fronts. He argues that the sentence was excessive because he "took extensive measures to ensure that no violence occurred." He also raises a disparate sentencing issue, complaining that he received the same sentence as Adams, whom he contends was "the instigator of the robbery and had a lengthier record." For purposes of the disparate sentencing argument, we grant defendant's

request to take judicial notice of the presentence investigation report prepared in Adams' case.[2] See *People v. Jimerson*, 404 Ill. App. 3d 621, 634 (2010) (court may take judicial notice of public records and judicial proceedings in related but severed jury trial of co-defendant).

¶ 42 Due to their extensive criminal histories, defendant and Adams were both eligible for extended-term prison sentences of between 6 and 60 years. Defendant's presentence investigation report reflected that he had eight prior convictions for armed robbery. Four of those convictions were from the early 2000s, and the others stemmed from the string of robberies in 2013. Adams' presentence report showed that among his prior convictions were 11 convictions for armed robbery. Six of those were from the early 2000s, and the others stemmed from the 2013 robberies.

¶ 43 At the sentencing hearing, the State presented evidence detailing the circumstances of other robberies that Adams and defendant had been either convicted of or charged with committing. Adams made a statement in allocution apologizing for any trauma inflicted on the victims of the crimes, adding: "I wish I hadn't drug [*sic*] my brother in this either." Defendant likewise apologized to the victims and asserted that "we never intended to hurt anyone in any way, period." Defendant insisted that he was "not a violent person," and he mentioned that he had a newborn son. The State asked for 50 years' imprisonment for both defendant and Adams. Defendant suggested a sentence of 15 years' imprisonment.

¶ 44 The trial court found it "almost incredible" to have so many armed robbery convictions, adding that it had seldom seen similar criminal histories. The court noted that in the early 2000s, Adams was sentenced to 13 years' imprisonment and defendant was sentenced to 14 years.

[2] *People v. Adams*, which was docketed as No. 2-14-0912 on appeal, is currently pending before this court.

When they completed parole, "they commenced a new line of armed robberies again." Thus, the court explained, it was difficult to accept an argument that such conduct would never happen again. With respect to the factors in aggravation, the court noted that defendant's and Adams' conduct threatened harm, that they had "an amazing history of prior criminal activity," and that there was a need to deter both them and others from committing crimes. As to the mitigating factors, the court considered that defendant and Adams "did not physically harm anyone" and that they had dependent families. In "digging" to find further mitigation, the court added:

> "Based on what I saw in this case and what I've heard from others, they are, perhaps, two of the most, I guess, for lack of a better word, courteous armed robbers that I've seen. They go in. And although they brandish what appears to be a weapon, they certainly don't, as far as I can tell in this particular case, do anything hostile. They're careful in not to harm someone."

The court also noted that defendant and Adams "readily admit to their crimes." The court sentenced both men to 30 years' incarceration.

¶ 45 Defendant argues that his sentence was manifestly disproportionate to the crime because this was a non-violent armed robbery. He emphasizes that this was not the type of robbery where he and Adams went into Radio Shack "guns-a-blazing." Nor did they point weapons at the victim, gesture aggressively, or physically threaten the victim. Defendant contends that a 30-year sentence, which was five times the minimum sentence, was an abuse of discretion.

¶ 46 In fashioning a sentence, the trial court must consider the particular circumstances of the case along with other factors such as "the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Perruquet*, 68 Ill. 2d 149, 154 (1977). The trial court is the proper forum for determining an appropriate sentence, and its

sentencing determination is accorded great deference and weight. *People v. Latona*, 184 Ill. 2d 260, 272 (1998). Where the trial court imposes a sentence that is within the statutory limits for the offense, we will not disturb the judgment unless the court abused its discretion, which occurs only if the sentence is "greatly at variance with the spirit and purpose of the law" or "manifestly disproportionate to the crime." *People v. Watt*, 2013 IL App (2d) 120183, ¶ 49.

¶ 47 The trial court here did not abuse its discretion. The court specifically commented that the crime was non-violent and took that factor into consideration. However, the court also properly took into account that defendant had a remarkable criminal history and that he embarked on a crime spree after having completed a lengthy prison sentence for the same type of offenses. Under these circumstances, a 30-year sentence of imprisonment was not manifestly disproportionate to the crime.

¶ 48 Defendant further argues that he should have received a lesser sentence than Adams because the two were not similarly situated. Specifically, he contends, "Adams was more criminally culpable and his record was more extensive." Defendant particularly emphasizes Adams' statement during allocution that he "drug" his brother into the robbery. Defendant argues that the trial court abused its discretion by failing to consider his background and involvement in the present offense.

¶ 49 Although defendant forfeited his disparate sentencing argument by failing to include it in his postsentencing motion, he asks us to review the matter for plain error. See *People v. Hillier*, 237 Ill. 2d 539, 544 (2010) ("It is well settled that, to preserve a claim of sentencing error, both a contemporaneous objection and a written postsentencing motion raising the issue are required."). To demonstrate plain error, "a defendant must first show that a clear or obvious error occurred." *Hillier*, 237 Ill. 2d at 545. "In the sentencing context, a defendant must then show either that (1)

the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing." *Hillier*, 237 Ill. 2d at 545. The defendant bears the burden of persuasion under both prongs of the plain-error analysis. *Hillier*, 237 Ill. 2d at 545. Defendant contends that the trial court committed plain error under both prongs. Alternatively, he argues that his trial counsel provided ineffective assistance by failing to include the disparate sentencing issue in the motion to reconsider the sentence.

¶ 50 Disparate sentencing arguments most frequently arise in the context where one defendant receives a harsher sentence than a co-defendant. The question for the reviewing court in such cases is whether there was a proper justification for treating the defendants differently. See, *e.g.*, *People v. Spriggle*, 358 Ill. App. 3d 447, 455-56 (2005). Defendant in the present case argues the opposite: that he should not have received the same sentence as Adams. He relies on *People v. House*, 26 Ill. App. 3d 330 (1975). In that case, defendants House and Dawdy were convicted of armed robbery and were sentenced to terms of imprisonment of not less than 8 years nor more than 24 years. *House*, 26 Ill. App. 3d at 331. According to the appellate court, "the record of prior anti-social or criminal behavior of [House and Dawdy] indicate[d] a substantial difference between the defendants." *House*, 26 Ill. App. 3d at 333. Specifically, House was 19 years old and had one prior conviction on a forgery charge, which occurred only after "she became associated with the defendant Dawdy." *House*, 26 Ill. App. 3d at 333. Dawdy was 28 years old and "had a substantial record of prior criminal involvement," including juvenile delinquency, violations of parole, and convictions of theft, battery, and forgery. *House*, 26 Ill. App. 3d at 333. The court explained:

> "Disparity in sentencing results when two defendants with apparent equal culpability for an offense, with like backgrounds, and like prospects for rehabilitation are

> given substantially different sentences. Disparity can also result when two defendants guilty of equal participation in an offense but with a substantially different background, with substantially different prospects for rehabilitation, of varying age, and an indicated variance in continuing criminal propensities, are given the same sentence." *House*, 26 Ill. App. 3d at 333.

Although the court recognized that its power to reduce a sentence "should be used with caution and circumspection," reducing House's sentence to a minimum of 4 years' imprisonment and a maximum of 12 years was appropriate under the circumstances. *House*, 26 Ill. App. 3d at 333-34.

¶ 51 *House* is distinguishable. This is not a situation where the co-defendants had substantially different backgrounds or prospects for rehabilitation. Although Adams had 11 prior armed robbery convictions and defendant had 8, at some point the difference in numbers becomes insignificant. Both men were career criminals who continued to commit armed robberies even after serving lengthy prison sentences. Thus, the trial court reasonably viewed defendant and Adams as being similarly situated. Moreover, the evidence introduced at trial did not show that defendant was less culpable than Adams with respect to the June 5, 2013, robbery. Surveillance footage showed that both men worked together to rob the store. Although defendant highlights Adams' comment in allocution that he should not have "drug" defendant into it, there is absolutely no indication in the record that defendant was acting under his brother's influence.

¶ 52 The trial court did not err in imposing the same sentence on defendant as it did on Adams. Accordingly, defendant has not demonstrated plain error. See *People v. Jones*, 2016 IL 119391, ¶ 33 (absent error, there is no plain error). For the same reason, his ineffective

assistance argument fails, as he has not demonstrated that his counsel's performance was deficient or that the defense was prejudiced by the failure to include the disparate sentencing issue in the post-sentencing motion.

¶ 53 III. CONCLUSION

¶ 54 For the reasons stated, we affirm the judgment of the circuit court of Du Page County. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4–2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 55 Affirmed.