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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 16-CF-338
)	
STEPHAWN A. JOHNSON,)	Honorable
)	Linda S. Abrahamson,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court did not abuse its discretion in admitting defendant's robbery conviction for impeachment and his statement as proof of motive, as the probative value of each was not substantially outweighed by any undue prejudice; (2) the trial court did not abuse its discretion in sentencing defendant: the court stated that it had considered all the sentencing factors, and, although the court initially stated that it could not consider defendant's immaturity and brain development when he was 18 or over, it reversed itself on his motion to reconsider and clarified that it did consider his youth.

¶ 2 Defendant, Stephawn A. Johnson, appeals his convictions and sentences for criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2014)) and criminal sexual abuse (720 ILCS 5/11-1.50(a)(1) (West 2014)), contending that the trial court erred in admitting his robbery

conviction, in admitting a statement he made to the victim, and in imposing sentence. Because the court properly admitted both his robbery conviction and his statement and did not abuse its discretion in imposing sentence, we affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was found guilty following a jury trial of one count of criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2014)) and one count of criminal sexual abuse (720 ILCS 5/11-1.50(a)(1) (West 2014)) and sentenced to consecutive terms of nine years in prison and two years in prison, respectively.

¶ 5 Before trial, defendant moved *in limine* to bar the victim's testimony that, when she asked defendant why he sexually assaulted her, he responded that he had "just got out of jail." Defendant also sought to bar his robbery conviction. The trial court allowed the victim to testify about defendant's statement to show motive for the charged crimes. The court further ruled that, if defendant testified, the robbery conviction was admissible to impeach him.

¶ 6 The following facts were established at the trial. At about 4 p.m. on May 10, 2015, Detective Lee Catavu of the Aurora Police Department met with the victim, Alicia Renteria, at the Aurora police station. Detective Catavu then drove Renteria around Aurora and had her direct him to where the sexual assault had occurred. She identified a house at 621 South Lincoln Avenue. Detective Catavu subsequently learned that defendant lived at that house with his grandmother.

¶ 7 Based on Renteria's description of her assailant, Detective Catavu prepared a photo array that included defendant's photo. In viewing the photos, Renteria identified defendant as her assailant.

¶ 8 At about 6:20 p.m. on May 10, 2015, Brittany Williams, an emergency room nurse at Mercy Hospital, examined Renteria for evidence of a sexual assault. Williams observed a scraping on both sides of Renteria's vagina. Williams also collected vaginal swabs and blood for testing.

¶ 9 According to Renteria, at about 11:30 p.m. on May 9, 2015, she met with Jacob Hartman, a friend, at a Walmart. She got in an SUV with Hartman and three other males. The driver was defendant. They then drove to defendant's grandmother's house in Aurora.

¶ 10 They arrived a little after midnight on May 10, 2015. Upon arriving, Renteria was introduced to defendant's grandmother, who then went into a bedroom. According to Renteria, she did not see defendant's grandmother again.

¶ 11 Renteria and the others began drinking, smoking cannabis, and hanging out. At one point, defendant gave Renteria some Xanax. According to Renteria, the Xanax limited her ability to move and she blacked out several times.

¶ 12 At one point, Hartman and one of the other males left. Later, Renteria awoke and saw blankets on the floor. Defendant and the other male then placed her on the blankets. The other male placed his penis in her vagina, while defendant tried to put his penis in her mouth. According to Renteria, she told them that she did not want to have sex and to stop. Because of the Xanax, she was unable to physically resist.

¶ 13 After trying to put his penis in Renteria's anus, defendant put it in her vagina. He then removed his penis and ejaculated on her shirt. Renteria testified that, when she asked defendant why he assaulted her, he answered that it was because he had just gotten out of jail. Renteria then fell asleep on a couch.

¶ 14 Renteria awoke around 7 a.m. and could not find her cell phone. She was angry with defendant, because she thought he might have stolen it. She then asked him for a ride home. She asked him to drop her off about a block from home so that he would not know where she lived.

¶ 15 Once at home, Renteria changed into her work clothes and asked her mother for a ride to work. About an hour later, Renteria called her mother and asked her to pick her up from work. After returning home, she told her mother about what had happened the night before. She and her mother then gathered Renteria's clothes from the night before and went to the police station to report the incident.

¶ 16 Heather Wright, a forensic biologist for the Illinois State Police, testified that she found the presence of semen in Renteria's vaginal swabs. There was no semen in Renteria's rectal or oral swabs.

¶ 17 Christopher Webb, another forensic biologist for the Illinois State Police, performed DNA analysis on the various swabs from Renteria and defendant's buccal swab. Webb opined that there was a match between the DNA in Renteria's vaginal swab and the DNA in defendant's buccal swab.

¶ 18 Defendant testified that, on May 10, 2015, he, Hartman, Renteria, and two other males were hanging out at his grandmother's apartment. All five drank, and, other than himself, the group also smoked cannabis. Defendant denied that anyone took any pills.

¶ 19 According to defendant, he and Renteria played cards. After that, he took Hartman and one of the other men home. Renteria did not ask to be taken home.

¶ 20 After defendant returned, he sat on a sofa with Renteria, and the two talked and flirted. The other male was sleeping on a different sofa. A few minutes later, Renteria asked defendant if he wanted to have sex. Defendant then put some blankets on the floor.

¶ 21 According to defendant, Renteria took her pants off and they had consensual vaginal sex. After about 10 minutes, defendant removed his penis and ejaculated on the blankets. Defendant and Renteria continued to lay on the blankets until they had vaginal sex again. Defendant again ejaculated on the blankets. According to defendant, he did not try to put his penis in Renteria's mouth or anus. Defendant denied that Renteria struggled, tried to get away, or told him to stop. He described Renteria as having enjoyed the sex.

¶ 22 Later that morning, Renteria woke defendant and asked him to look for her phone. Renteria looked angry about not being able to find her phone. After being unable to find her phone, Renteria asked defendant to drive her home. He did so.

¶ 23 During the State's rebuttal, the trial court admitted a certified copy of defendant's robbery conviction. The court instructed the jury that it could consider the conviction only as to the issue of defendant's credibility as a witness.

¶ 24 The jury found defendant guilty of criminal sexual assault based on his having placed his penis in Renteria's vagina and criminal sexual abuse based on his having touched her breasts for sexual arousal or gratification. Defendant filed a motion for a judgment notwithstanding the verdict and for a new trial. He contended, among other things, that the trial court erred in admitting, as other-crimes evidence, Renteria's testimony that defendant told her he had just gotten out of jail. He further asserted that the court erred in admitting the robbery conviction for impeachment. The court denied the posttrial motion.

¶ 25 In imposing sentence, the trial court stated that it considered all of the evidence at the sentencing hearing and all of the information in the presentence investigation report (PSI), including that defendant had suffered a serious head injury when he was 13 years old. The court found that no statutory mitigating factors applied. The court commented that, although it recognized that defendant was a very young man, any argument regarding immature brain development of someone over 18 years old was not cognizable in Illinois. As for aggravating factors, the court noted that defendant's conduct threatened serious harm and that he had a history of prior criminal activity, including a fairly recent violent offense. The court added that a lengthy sentence was necessary to deter, that the charged offenses were committed while defendant was on probation, and that defendant committed the offenses weeks after being released from jail. The court sentenced defendant to consecutive terms of nine years in prison for criminal sexual assault and two years in prison for criminal sexual abuse.

¶ 26 Defendant, in turn, filed a motion to reconsider the sentence. In denying the motion, the trial court noted that it had incorrectly commented at sentencing that immature brain development of someone at least 18 years old was not recognized as a sentencing factor in Illinois. However, the court added that "notwithstanding what [it] may have said, [it] did also consider [defendant's] age," which the sentence reflected. Defendant then filed a timely notice of appeal.

¶ 27

II. ANALYSIS

¶ 28 On appeal, defendant contends that (1) the trial court abused its discretion in admitting evidence of his robbery conviction, because its prejudicial effect substantially outweighed its probative value, (2) the trial court abused its discretion in allowing Renteria to testify about defendant's statement that he had just gotten out of jail, because the prejudicial effect

substantially outweighed the probative value, and (3) the trial court abused its discretion when it failed to consider his youth, along with other factors, in mitigation.

¶ 29 We begin with the admission of the robbery conviction. Contrary to defendant's assertion, the conviction was not admitted as other-crimes evidence. Rather, the trial court admitted it solely as impeachment. In its pretrial ruling, the court stated that the robbery conviction would be admissible as impeachment, only if defendant testified. Only after defendant testified was the certified copy of the conviction admitted. Further, the court instructed the jury that it was to consider the conviction only for impeachment. Thus, we do not consider the robbery conviction as other-crimes evidence.

¶ 30 That said, we note that, irrespective of whether the conviction was admitted as other-crimes evidence or for impeachment, defendant contends that it was improperly admitted, because its probative value was outweighed by the danger of unfair prejudice. Thus, we will address that issue.

¶ 31 If a defendant testifies, the State may use a conviction to discredit him as a witness, but not to prove his guilt. *People v. Naylor*, 229 Ill. 2d 584, 594 (2008). Evidence of a defendant's conviction is admissible to impeach the defendant's credibility as a witness if (1) the conviction was punishable by death or imprisonment in excess of one year, or involved dishonesty or false statements regardless of the punishment, (2) less than 10 years have passed since the conviction or the defendant's release, whichever was later, and (3) the conviction's probative value outweighs the danger of unfair prejudice. *People v. Montgomery*, 47 Ill. 2d 510, 516 (1971); see also Ill. R. Evid. 609 (eff. Jan. 6, 2015) In balancing the probative value against the danger of unfair prejudice, a trial court should consider, among other things, the nature of the conviction, the conviction's nearness or remoteness to the charged offense, the subsequent career of the

defendant, the defendant's criminal record, and whether the conviction was similar to the charged offense. *People v. Mullins*, 242 Ill. 2d 1, 14-15 (2001). A conviction has probative value if it could impair a defendant's credibility as a witness. *People v. McKibbins*, 96 Ill. 2d 176, 188 (1983).

¶ 32 Initially, defendant contends that the trial court failed to conduct the required balancing. We disagree.

¶ 33 Although a trial court must apply the balancing test, it need not specify on the record the factors relied on. *People v. Melton*, 2013 IL App (1st) 060039, ¶ 17; see also *People v. Williams*, 173 Ill. 2d 48, 83 (1996). However, the record must include at least some indication that the court was aware of its discretion to exclude the conviction. *People v. White*, 407 Ill. App. 3d 224, 233-34 (2011). We review for an abuse of discretion a trial court's ruling on the admissibility of a defendant's conviction for impeachment. *Melton*, 2013 IL App (1st) 060039, ¶ 17.

¶ 34 In this case, the record shows that the trial court conducted the required balancing. Although the court did not articulate the precise factors that it considered, it was clearly aware of the need to balance the prejudicial effect against the probative value. In arguing that the conviction should not be admitted, defense counsel told the court that, when it "appl[ie]d the balancing test," the prejudice would outweigh the probative value. More importantly, in admitting the conviction, the court stated that, when "balancing all factors," the probative value outweighed any prejudice. Thus, the record shows that the court conducted the required balancing.

¶ 35 In conducting that balancing, the trial court did not abuse its discretion. Defendant and Renteria offered conflicting versions as to whether the sexual encounter was consensual.

Accordingly, defendant's credibility was a key issue. Because the conviction was relevant to impeach defendant's credibility (see *Naylor*, 229 Ill. 2d at 594), its admission was particularly probative.

¶ 36 More importantly, the probative value outweighed the danger of unfair prejudice. The conviction was for robbery, a crime distinct from the charged sexual offenses. Although the conviction was relatively recent, it was the only one used to impeach defendant. Additionally, no details of the robbery were admitted. Further, the trial court instructed the jury to consider the conviction for the limited purpose of impeachment and not as to defendant's guilt. When the probative value is balanced against the danger of unfair prejudice, the court did not abuse its discretion in admitting the robbery conviction.

¶ 37 We next address whether the trial court abused its discretion in allowing Renteria to testify that, when she asked defendant why he sexually assaulted her, he said that he had just gotten out of jail. It did not.

¶ 38 Although the trial court admitted Renteria's testimony as other-crimes evidence, we may affirm that ruling on any basis supported by the record. See *People v. Davis*, 2018 IL App (1st) 152413, ¶ 37.

¶ 39 A defendant's statement is admissible if it is offered against the defendant. Ill. R. Evid. 801(d)(2)(A) (eff. Oct. 15, 2015); *People v. Garcia*, 2017 IL App (1st) 133398, ¶ 68.¹ However, it must be relevant to an issue in dispute and its probative value must not be substantially outweighed by its prejudicial effect. *Garcia*, 2017 IL App (1st) 133398, ¶ 68. Relevant

¹ After submitting his reply brief, defendant moved to cite *Garcia* as additional authority.

We now grant that motion.

evidence has a tendency to make the existence of a fact of consequence, such as a defendant's guilt, more or less probable than without the evidence. *Garcia*, 2017 IL App (1st) 133398, ¶ 68.

¶ 40 Here, defendant's statement to Renteria was offered against him. Further, it was relevant to show his motive in committing the charged offenses. See *People v. Nitz*, 143 Ill. 2d 82, 123-24 (1991) (any evidence that tends to show that an accused had a motive for committing the offense is relevant). Indeed, it was reasonable for the jury to infer that, because defendant had recently been in jail, he had pent-up sexual urges that caused him to have nonconsensual sex with Renteria. Thus, Renteria's testimony that defendant told her he had recently been in jail was probative of defendant's motive.

¶ 41 On the other hand, the undue prejudice was not significant. Although his being in jail implied that he had committed a crime, there was no indication of the particular crime, specifically that it was a sex crime. To the extent the jury might have inferred that defendant was in jail because of the robbery, that offense was entirely different from the charged sex offenses. Further, Renteria's testimony about defendant's statement was not emphasized at trial. Indeed, Renteria mentioned the statement only once, and the State only briefly referenced it in its rebuttal argument. When the probative value is balanced against the prejudicial effect, the prejudice did not substantially outweigh the probative value. Thus, the trial court did not abuse its discretion in admitting Renteria's testimony about defendant's statement.

¶ 42 We next address whether defendant's sentence was an abuse of discretion. He contends that the trial court failed to properly consider his youth, his difficult childhood, his rehabilitative potential, his lack of a significant criminal history, and his expressed desire to improve himself.

¶ 43 The Illinois Constitution requires a trial court to impose a sentence that achieves a balance between the seriousness of the offense and the defendant's rehabilitative potential.

People v. Brown, 2018 IL App (1st) 160924, ¶ 8. To strike that balance, a court must consider a number of aggravating and mitigating factors, including the nature and circumstances of the crime, the defendant's conduct in committing the crime, and the defendant's personal history, including his age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment, and education. *Brown*, 2018 IL App (1st) 160924, ¶ 8. A reviewing court will not reweigh the sentencing factors and may not substitute its judgment for that of the trial court merely because it would have weighed the factors differently. *Brown*, 2018 IL App (1st) 160924, ¶ 8. A trial court is not required to expressly outline its reasoning for a sentence. *People v. Jones*, 2014 IL App (1st) 120927, ¶ 55. Indeed, there is a presumption that the trial court considered all relevant sentencing factors, and that presumption is not overcome without explicit evidence in the record that the court did not consider a mitigating factor. *Brown*, 2018 IL App (1st) 160924, ¶ 9. A reviewing court may not modify a sentence absent an abuse of discretion. *Brown*, 2018 IL App (1st) 160924, ¶ 9. A sentence that is within the applicable statutory range will be deemed excessive only where it greatly varies from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *People v. Stacey*, 193 Ill. 2d 203, 210 (2000).

¶ 44 In this case, defendant's sentence for each conviction was essentially in the middle of the applicable range. Further, the trial court stated that, in imposing the sentence, it considered all of the sentencing evidence, the PSI, defendant's allocution, and defense counsel's argument.² Additionally, in denying defendant's motion to reconsider the sentence, the court noted that it had considered defendant's youth, lack of a juvenile record, criminal history, and childhood.

² We allowed appellant's motion to supplement the record with the PSI and medical exhibits.

¶ 45 Defendant asserts, however, that, because the trial court incorrectly noted that immaturity and brain development were not applicable sentencing factors for someone 18 years old or older, it did not properly consider his youth. However, although the court initially did not consider defendant's maturity and brain development, it stated at sentencing that it appreciated the argument regarding defendant's youth. Moreover, at the hearing on defendant's motion to reconsider the sentence, the court acknowledged that defendant's immaturity and brain development were relevant but it reiterated that it had considered defendant's youth when it imposed the sentence. In assessing the propriety of a sentence, we consider the record as a whole. *People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 22. This includes the hearing on the motion to reconsider, during which the court clarified the sentencing factors that it considered. See *People v. Malin*, 359 Ill. App. 3d 257, 264 (2005). The record here shows that the court considered defendant's age in fashioning the sentence. Thus, the court did not abuse its discretion in imposing the sentence.

¶ 46

III. CONCLUSION

¶ 47 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 48 Affirmed.