

No. 1-10-3235

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	
)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
)	Cook County.
v.)	
)	No. 09 CR 1767
JOSE VALDOVINOS,)	
)	Honorable
Defendant-Appellant.)	Stanley J. Sacks,
)	Judge Presiding.
)	

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

ORDER

- ¶ 1 *Held:* (1) Where several witnesses, including defendant himself, testified that defendant’s nickname was “Pepe,” any error in permitting a detective to testify that, after speaking with a suspect, he was able to connect defendant’s name with the nickname “Pepe” was harmless. (2) Although the trial court issued erroneous jury instructions as to the counts of armed robbery and aggravated vehicular hijacking, the errors do not rise to the level of plain error.
- ¶ 2 Following a jury trial, defendant Jose Valdovinos was convicted of armed robbery, aggravated vehicular hijacking, and aggravated kidnaping based on his conduct toward victim

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Jose Rodriguez on December 14 and 15, 2008. Defendant was sentenced to concurrent sentences of 15 years for the aggravated vehicular hijacking, 15 years for the armed robbery, and 20 years for the aggravated kidnaping in the Illinois Department of Corrections. On appeal, defendant claims: (1) that a Chicago police detective's testimony that he knew defendant was involved after speaking with a suspect was improper hearsay; and (2) that the jury was improperly instructed on the elements of armed robbery and aggravated vehicular hijacking. For the reasons that follow, we affirm.

¶ 3

BACKGROUND

¶ 4 On January 26, 2009, defendant was indicted, along with four codefendants,¹ for attempted first-degree murder, aggravated vehicular hijacking, aggravated kidnaping, armed robbery, and aggravated battery, based on their actions toward victim Jose Rodriguez on December 14 and 15, 2008.

¶ 5

I. Pretrial Proceedings

¶ 6 On August 9, 2010, defendant filed a motion *in limine*, asking the trial court to bar the State from introducing out-of-court statements made by his codefendants, who were not scheduled to testify during his trial, in which they implicated defendant in the crimes against Rodriguez. The court denied the motion, finding that the police could testify to the course of the investigation, but limited the State during closing argument from arguing that the substance of the codefendants' statements implicated defendant.

¹ Defendant's trial was severed from those of his codefendants.

¶ 7

II. Trial

¶ 8 Defendant's trial began on August 9, 2010. The State presented the testimony of seven witnesses, including victim Jose Rodriguez, and the defense presented the testimony of four witnesses, including defendant.

¶ 9

A. State's Case-in-Chief

¶ 10

1. Jose Rodriguez

¶ 11 The State's first witness was Jose Rodriguez, the victim. Rodriguez testified that on the evening of December 13, 2008, he and three friends visited a bar known as El Plan. Rodriguez was drinking liquor and playing pool, when he observed an acquaintance called Pepe; Rodriguez identified defendant in court as Pepe. Defendant was in the presence of three other people, one of whom Rodriguez identified as Lazaro Perez. Rodriguez testified that he knew defendant from playing pool at the bar, and had known him for a week. Rodriguez testified that when Rodriguez was at the bar the prior week and played pool with defendant, he had approximately \$1,200 in cash in his wallet. On December 13, when defendant played pool with Rodriguez, defendant wanted to wager \$50 on the game, but Rodriguez only wanted to play for beers. Defendant "kind of got upset," but they ended up playing for beers.

¶ 12 Rodriguez testified that he stayed at the bar on December 13 for approximately five hours, until he left at 1 a.m. on December 14 to drive a friend to his vehicle. Rodriguez then returned to the bar, parking his vehicle approximately one block from the bar. Rodriguez was exiting his vehicle when a red van pulled up. Defendant and Perez exited the van and defendant pointed a gun at Rodriguez's head; Rodriguez described the gun as a semiautomatic handgun.

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Defendant then hit Rodriguez over the head, grabbed him, and placed him in the backseat of Rodriguez's vehicle. Defendant told Rodriguez that, if he screamed, defendant would kill him. Defendant sat in the backseat with Rodriguez, pointing the gun to Rodriguez's head, and Perez drove the vehicle to a detached garage located next to a house.

¶ 13 When they arrived at the garage, Rodriguez's hands and feet were bound with tape by defendant, Perez, and another man, who had tattoos on his arms and had driven the red van; Rodriguez's hands were bound behind his back. Defendant took Rodriguez's keys and wallet and demanded \$350,000; defendant told Rodriguez that, if he did not pay defendant, defendant would kill him. Rodriguez informed defendant that he did not have that much money and that defendant might have the wrong person. Rodriguez told defendant that the most money he could give defendant was \$10,000 from his job as a carpenter.

¶ 14 The men covered Rodriguez's head and led him to the house, where they placed Rodriguez inside a closet. Inside the closet, Rodriguez moved frequently because he was hot, and the man with the tattoos hit him with a baseball bat because of his movement. Rodriguez testified that defendant also hit him with a baseball bat "a lot of times" whenever he moved.

¶ 15 Rodriguez testified that he was taken out of the closet and into a room, where his feet were tied with a rope attached to a door. While at the house, defendant made a phone call to someone supposedly in Mexico, which Rodriguez heard because the call was on a speakerphone. The person said that if Rodriguez did not have the money, he was going to kill Rodriguez's family in Mexico and defendant would kill Rodriguez; Rodriguez testified that he had documents in his vehicle that contained his family's address in Mexico that defendant had removed from his

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vehicle. Defendant and Perez left for “awhile,” and Rodriguez was alone with the tattooed man. When defendant and Perez left, the tattooed man beat Rodriguez with a baseball bat, threw him on the floor, and had two pitbull dogs lick the blood from Rodriguez’s face.

¶ 16 Defendant and Perez returned to the house approximately three hours later. A young woman with a little girl also came to the house while Rodriguez was there and argued with defendant, saying “that wasn’t right.” The woman and little girl left, as did defendant. Perez and the tattooed man then took Rodriguez to another location. Rodriguez heard Perez and the tattooed man saying that they were afraid the young woman would call the police.

¶ 17 When they moved Rodriguez to the second location, Perez and the tattooed man moved him in a blue Volvo vehicle, which Perez drove; Rodriguez and the tattooed man sat in the backseat and the tattooed man held a “blade” to Rodriguez’s neck. Rodriguez testified that he was moved on the evening of December 14, so he had been at the first house through the entire day of December 14.

¶ 18 When they arrived at the second location,² defendant was waiting for them. Defendant came up to the vehicle, grabbed Rodriguez, placed a gun to Rodriguez’s back, and took him inside the apartment; Rodriguez testified that the gun he observed appeared identical to the one defendant had previously displayed. Perez and the tattooed man also went inside the apartment,

² In his testimony, Rodriguez refers to this location as a “house,” but his testimony, as well as the rest of the record, indicates that it was an apartment. Out of respect for the law-abiding residents of the apartment building, we do not provide the address of the apartment building.

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where three other people were present; Rodriguez identified the other three people as Facundo Zamora, Luis Lara, and Felipe Trujillo. Defendant led Rodriguez to the bedroom, where defendant, Perez, and the tattooed man wrapped his hands and feet with “more tape.” Defendant beat Rodriguez with a baseball bat every time he moved, then told Rodriguez that he needed to obtain \$350,000; Rodriguez told defendant that he did not have the money.

¶ 19 At some point during the night, defendant left the apartment with the tattooed man; Perez, Zamora, Lara, and Trujillo remained at the apartment. They were drinking liquor and periodically came back to check that Rodriguez was well-tied. They told Rodriguez that they would kill him the following day if he could not obtain the money.

¶ 20 Rodriguez testified that he “felt that [he] had to fight for [his] life,” so, all night, he tried breaking through the tape binding his feet. Eventually, during the early morning, the tape binding his feet ripped, but his hands remained bound. Rodriguez could not hear any noise from the four men, so he believed they were sleeping and decided to try to escape. Rodriguez was able to unlock and open the back door and left. Rodriguez ran through the alley and considered asking for help from a nearby school, but did not want to scare the children.

¶ 21 Rodriguez testified that he continued running, and found a woman on the street; Rodriguez later learned the woman’s name was Maria Campos. He told her what happened and asked her to help him and call the police. Campos told Rodriguez to hide in her vehicle and covered Rodriguez with a tablecloth until the police arrived. When the police arrived, they cut the tape binding Rodriguez’s hands.

¶ 22 Rodriguez testified that the police placed him in the backseat of their squad vehicle and

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he directed them to the building where he was being held. Additional officers arrived and the police entered the apartment, bringing out Perez, Trujillo, Lara, and Zamora and arresting all four. The police then took Rodriguez to the hospital, where he was treated for his wounds and released.

¶ 23 Rodriguez testified that he spoke to the police at the hospital and told them what had happened and about the man he knew only as Pepe, the defendant. After leaving the hospital several hours later, he went to the police station, where he was re-interviewed by detectives; a Spanish-speaking officer served as an interpreter. At approximately 12:15 a.m. on December 16, Rodriguez viewed a photo array; he was unable to identify anyone in the photo array.

¶ 24 Rodriguez testified that the police recovered his vehicle on December 26 and returned it the next day. Rodriguez was contacted by Chicago police detectives on January 7, 2009, and asked to come to the police station to view a lineup. Rodriguez went to the station and viewed the lineup, where he identified defendant.

¶ 25 On cross-examination, Rodriguez testified that he had played pool with defendant on at least two separate occasions. Rodriguez also admitted that he did not tell the police officers about the tattooed man when he showed them the house and could not recall whether he told them about defendant.

¶ 26 2. Maria Campos

¶ 27 The State's next witness was Maria Campos, who testified that at approximately 7:35 a.m. on December 15, 2008, she was outside her house, starting her vehicle to take her children to school. She entered her vehicle and backed it out of the garage; she was almost outside when

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she observed a man standing to her left, near her vehicle; she had never met the man but later learned that his name was Jose Rodriguez. Campos testified that he appeared nervous and scared, he was breathing quickly, his face was swollen “like when somebody gets hit,” and his hands were bound in front of his body. Rodriguez asked her to call the police.

¶ 28 Campos testified that she was afraid, but told Rodriguez that she would help him. She told him to lay down in the backseat of her vehicle in case someone was chasing him. Campos grabbed her phone, and her 13-year-old daughter came outside. Since Campos did not speak English, she asked her daughter to help and to call 911. Campos’ daughter took the phone and called 911. Campos entered the vehicle, and her daughter sat in the front passenger seat, and Campos finished backing the vehicle up, parking it on the street next to her house.

¶ 29 Campos testified that she then went inside her house, grabbed a blanket, and covered Rodriguez with the blanket so that he would be hidden. She then re-entered the vehicle, and her 14-year-old son came outside and sat in the backseat, where defendant was hidden. Campos testified that her son entered the vehicle because he was unaware of the circumstances, and she re-entered the vehicle in case someone was following Rodriguez. A few minutes later, the police arrived.

¶ 30 3. Officer Carranza

¶ 31 The State’s next witness was Officer Aaron Carranza of the Chicago police department, who testified that at approximately 7:30 a.m. on December 15, 2008, he received a call concerning a kidnaping. Carranza drove to the location given, and was flagged down by a woman inside a vehicle, who he later learned was named Maria Campos. Carranza observed

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Campos in the driver's seat, a child in the front passenger seat, and a child in the backseat. The backdoor to the vehicle was ajar, and Carranza observed Rodriguez in the backseat behind the driver.

¶ 32 Carranza testified that when he first observed Rodriguez, he noticed that Rodriguez's wrists were bound in front of his body with duct tape and that there was duct tape on his ankles that was broken. Rodriguez seemed "fearful" and "scared." Carranza immediately cut the tape on Rodriguez's wrists with a pocket knife and radioed in, notifying his sergeant that there appeared to be a kidnaping. Carranza requested an ambulance and a Spanish interpreter, since neither Rodriguez nor Campos were able to speak English. Several officers arrived on the scene to assist, including Spanish-speaking officers.

¶ 33 Carranza testified that an officer named Officer Garcia³ interviewed Rodriguez in Spanish, and other officers then relocated to a building approximately three-quarters of a block away; Carranza followed shortly thereafter, after first obtaining Campos' information. Carranza testified that the building was a residence that appeared to be divided into apartments with separate front doors. Carranza observed officers bringing out four individuals from the front door of a garden apartment, located beneath the stairwell of the residence. The individuals were taken a few houses away, where Rodriguez identified them in a show-up and they were placed into custody.

¶ 34 Carranza testified that he entered the apartment from which the individuals were taken and described it as "kind of in a mess." Carranza testified that 11 bullets were recovered from

³ The first name of Officer Garcia is not contained in the record.

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the kitchen counter of the apartment, which also contained a baseball bat.

¶ 35 On cross-examination, Carranza testified that the general offense report he prepared did not indicate that anyone other than the four individuals was claimed to be involved, nor was there a physical description of anyone claimed to be involved, other than the four individuals who were arrested. Carranza further testified that he was not informed that day about an individual with tattoos on his arms and that the only weapon he was informed of was the baseball bat.

¶ 36 4. Officer Dowling

¶ 37 The State's next witness was Officer John Dowling of the Chicago police department, who testified that prior to 8 a.m. on December 15, 2008, he received a radio transmission concerning a kidnaping. Dowling drove to the location, where he met Officers Carranza, Scott, Bailey, and Connell, and observed a man he learned was Rodriguez, the victim, who was "very scared, nervous, trembling," and "obviously had some duct tape around his wrist"; Dowling testified that the duct tape was black. Dowling did not speak Spanish, but observed Officer Garcia, a Spanish-speaking officer, translating for Rodriguez.

¶ 38 Dowling testified that he spoke with the other officers, and a plan was formulated to attempt to gain entry into the apartment. They set up a perimeter around the building, and Dowling went to the front door, which was located below the stairs, with Officers Connell, Bailey, Carranza, and Scott. They knocked on the door, which was answered by a man Dowling learned to be Lazaro Perez. The police detained Perez and entered the apartment, where they detained three other men.

¶ 39 Dowling testified that he brought Perez outside to the police vehicle, where Rodriguez

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was sitting, and Rodriguez pointed at Perez. An officer inside the vehicle gave Dowling a thumbs-up, and Dowling placed Perez under arrest. The three other individuals were also shown to Rodriguez and were also placed into custody. Dowling returned to the apartment, where he observed a wooden baseball bat on the kitchen sink and several empty beer bottles on the counter. Dowling further observed two rolls of duct tape, one black and one silver, sitting on the kitchen table. The silver duct tape was in a wrapper marked with a price tag; Dowling testified that he did not observe any silver duct tape on Rodriguez. Eleven live nine-millimeter bullets were also recovered by Officer Connell; Dowling testified that Connell recovered the bullets prior to the evidence technician arriving for safety reasons.

¶ 40

5. Detective Reiff

¶ 41 The State's next witness was Detective Scott Reiff of the Chicago police department, who testified that shortly after 8 a.m. on December 15, 2008, he and his partner, Detective Stanek, were assigned a kidnaping case. When assigned the case, Reiff was informed that there were four individuals in custody and a victim at the hospital. Reiff and Stanek first visited Rodriguez at the hospital. Neither Reiff nor Stanek spoke Spanish, so Officer Garcia served as an interpreter.

¶ 42 Reiff testified that when he visited Rodriguez, he observed that Rodriguez had cuts and bruises on his body, blood on his head and clothing, and his face appeared to have been cleaned up. He spoke with Rodriguez for approximately 30 minutes; Rodriguez appeared visibly shaken and nervous. When he spoke to Rodriguez, Rodriguez mentioned the name Pepe several times; Reiff could not determine who Pepe was at that time.

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¶ 43 Reiff testified that, after speaking with Rodriguez, he visited the crime scene. In the apartment, he observed a brown jacket with tape stuck to it, multiple cell phones, and personal paperwork bearing Rodriguez's name, all of which he asked an evidence technician to recover. He also encountered one of the building's residents. After visiting the apartment, Reiff visited the El Plan bar, which was approximately half a block from the apartment. Reiff interviewed four people, after which he returned to the police department, where he interviewed Lara, Trujillo, Zamora, and Perez. Reiff testified concerning his interview with Lara:

“Q. Did you speak with Luis Lara that afternoon at about --

I'm [*sic*] am sorry -- 5:14 in the afternoon?

A. Yes.

Q. Okay. And after you spoke with Luis Lara, did you go to your computer?

A. Yes, at some point, yes.

Q. Okay. After speaking with Luis Lara did you have a name, a full name, associated with the nickname [P]epe?

A. Yes.

Q. And what was that name?

A. Jose Valdovinos.”

¶ 44 Reiff testified that he was able to locate a photograph of defendant, but the photograph was not a current one; defendant appeared thinner now than he did in the photo. Reiff printed the photo and placed it into a photo array containing six photos, which he showed to Rodriguez on

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December 16, 2008. Rodriguez did not identify defendant from the photo array.

¶ 45 Reiff testified that he met defendant on January 7, 2009, at the police station, and conducted a lineup. Rodriguez viewed the lineup and identified defendant.

¶ 46 6. Officer Purvis

¶ 47 The State's next witness was Officer William Purvis, an evidence technician with the Chicago police department, who testified that on December 27, 2008, he was assigned to process a vehicle in connection with the kidnaping. When he arrived at the auto pound, he met Detective Stanek. Purvis testified that he was unable to recover any fingerprints from the vehicle, but recovered and inventoried a key chain; a CD; two bags of wet wipes, one of which appeared to be open and used; and a black cell phone case from the vehicle, which was a 2003 Buick.

¶ 48 7. Forensic Scientist Peggy Konrath

¶ 49 The State's next witness was Peggy Konrath, a forensic scientist with the Illinois State Police, who testified that she was assigned to perform a fingerprint analysis on the kidnaping case. She was provided three sets of tape stuck to fabric, a silver roll of duct tape, a black roll of duct tape, a wooden bat, and 11 live cartridges to analyze. Konrath testified that she did not perform any analysis on the silver roll of duct tape, because it was still sealed and had not been opened, but could not recover any fingerprints from the other evidence.

¶ 50 The State then rested, and the defense moved for a directed verdict. The trial court granted the motion for directed verdict as to the attempted murder count and denied the motion as to all of the other counts.

¶ 51

B. Defense Case-in-Chief

¶ 52

1. Ana Betancourt

¶ 53 The defense's first witness was Ana Betancourt, who resided on the second floor of the building at which Rodriguez was held during December 2008. Betancourt testified that, after returning home at approximately 10 p.m. on December 14, 2008, she did not hear any unusual noises coming from the garden apartment. At approximately 7 a.m. on December 15, she was awakened by noises coming from the first floor. Betancourt ran to the back door, where she heard knocking. She opened the door and discovered police officers pointing guns at her. Betancourt testified that she had never observed defendant at the building, nor did she know him.

¶ 54 On cross-examination, Betancourt testified that she knew the individuals who lived in the garden apartment. She testified that on December 15, the police were running up the back stairs pointing their guns and a man was sitting on the stairs leading to the third floor; she identified a photo of Zamora as the man sitting on the stairs. The police ordered Betancourt to close her door, so she was unable to observe what occurred.

¶ 55 Betancourt identified a photo of Trujillo as one of the people who lived in the garden apartment. He had lived in the apartment since approximately August and drove a dark colored Volvo. Betancourt testified that she was the landlord of the garden apartment and that a man named Jason rented the apartment. She described Jason as bald, short, and a little heavy. She testified that Jason returned to the apartment approximately two weeks after the incident.

¶ 56

2. Maria Gutierrez

¶ 57 The defense's next witness was Maria Gutierrez, defendant's girlfriend, who testified that

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in December 2008, she lived in Oak Lawn with her sister, her nephews, and her daughter. She testified that she remembered the date of December 13, 2008, because on December 12, she went to church to celebrate the Virgin of Guadalupe.

¶ 58 Maria⁴ testified that during the evening of December 13, 2008, she was at home in Oak Lawn; defendant was with her at her house all day on December 13 and left between 7:30 and 8 p.m. Defendant returned to her house at 11 or 11:30 p.m. and spent the night there; Maria knew that he was present because they slept in the same bed. Maria testified that defendant did not leave the house at any time on December 14.

¶ 59 Maria testified that defendant drove a green SUV and did not drive a Volvo or a van. Maria testified that defendant lived with her until January 2009. She testified that in January 2009, she went to the police and informed them that defendant could not have been involved with the kidnaping because he was with her, but did not know what police officer she spoke to. She admitted that she never said anything to any of the prosecutors in the courtroom about defendant's alibi and refused to speak to the investigator sent to her home.

¶ 60 3. Patricia Gutierrez

¶ 61 The defense's next witness was Patricia Gutierrez, Maria Gutierrez's sister, who lived with Maria in Oak Lawn. Patricia testified that in December 2008, she lived at the house in Oak Lawn with her children, her ex-husband, Maria, and defendant; Patricia lived "upstairs" and defendant and Maria lived in the basement. Patricia testified that Maria and defendant were

⁴ We refer to Maria Gutierrez by her first name, since both she and her sister, another defense witness, share the same last name.

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dating at the time.

¶ 62 Patricia testified that she recalled the date of December 12, 2008, because she went to church to celebrate the Virgin of Guadalupe. The next day, defendant was at the Oak Lawn house the entire day, which Patricia knew because she could hear him. Defendant knocked on Patricia's door at approximately 11 p.m. on December 13 because he had forgotten his key, and Patricia answered the door and let him inside. On cross-examination, Patricia admitted that she had never mentioned defendant's alibi to police and had refused to speak with the investigator sent to her home. She further admitted that defendant's nickname was Pepe, but testified that Pepe was a common nickname for a person with the name Jose.

¶ 63 4. Defendant

¶ 64 Finally, defendant testified on his own behalf that his nickname was Pepe and that he was present at El Plan bar on December 13, 2008. He arrived at the bar between 7 and 8 p.m. and left prior to 11 p.m. When he left the bar, he returned to his girlfriend's house in Oak Lawn, arriving there shortly after 11 p.m. He had left his keys at home, so he had to knock to be let in. He did not leave after returning to the house.

¶ 65 Defendant testified that he had first visited the bar a month earlier and had been there twice a week since then. While he was in the bar on December 13, he encountered Rodriguez, whom he had previously met once or twice at the bar; when he met Rodriguez, he introduced himself as Pepe. Defendant and Rodriguez played pool two or three times, playing for beer; he denied ever asking Rodriguez to play for money. Defendant also knew Perez from the bar. Defendant recalled speaking to Perez and Rodriguez at the bar on the night of December 13.

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When he left the bar, Perez was still inside.

¶ 66 Defendant denied participating in Rodriguez’s kidnaping and denied ever being at the address where Rodriguez was held. Defendant testified that he was arrested on January 7, 2009, and was cooperative with the police. Defendant denied knowing Zamora, Trujillo, or Lara prior to the beginning of his criminal case.

¶ 67 Defendant testified that his job was buying and selling cars; he “d[id] it on [his] own” and did not have a place of employment. He drove a green Cadillac SUV.

¶ 68 After defendant’s testimony, the defense rested.

¶ 69 C. Closing Arguments and Jury Instructions

¶ 70 During closing arguments, the State argued:

“[Detective Reiff] interviews offender Lara. He interviews all the offenders in custody. But he interviews Lara and he knows who he is looking for, Jose Valdovinos. The investigation continues, but now they have a name.”

During the defense’s closing argument, the defense attorney noted: “I don’t think you need to tell me what the disputed issue of fact is. Very simply, is this the right guy or isn’t it?”

¶ 71 The trial court issued a number of jury instructions, several of which are relevant in the case at bar. The trial court gave a jury instruction based on Illinois Pattern Jury Instructions, Criminal, No. 14.05 (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 14.05):

“A person commits the offense of armed robbery when he, while carrying on or about his person, or while otherwise armed

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with a dangerous weapon, knowingly takes property from the person or presence of another by the use of force or by threatening the imminent use of force.”

The court also gave a jury instruction based on IPI Criminal 4th No. 14.06:

“To sustain the charge of armed robbery, the State must prove the following propositions:

First: That the defendant, or one for whose conduct he is legally responsible, knowingly took property from the person or presence of Jose Rodriguez; and

Second: That the defendant, or one for whose conduct he is legally responsible, did so by the use of force or by threatening the imminent use of force; and

Third: That the defendant, or one for whose conduct he is legally responsible, carried on or about his person a dangerous weapon or was otherwise armed with a dangerous weapon at the time of the taking.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a

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reasonable doubt, you should find the defendant not guilty.”

(Emphases in original.)

The instruction based on IPI Criminal 4th No. 14.06 was given over defendant’s objection concerning the instruction’s accountability language.

¶ 72 The trial court gave two instructions concerning aggravated vehicular hijacking. The first was based on IPI Criminal 4th No. 14.23, which provided:

“A person commits the offense of aggravated vehicular hijacking when he knowingly takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force, and he carries on or about his person or is otherwise armed with a dangerous weapon.”

The second, based on IPI Criminal 4th No. 14.24, provided:

“To sustain the charge of aggravated vehicular hijacking, the State must prove the following propositions:

First: That the defendant, or one for whose conduct he is legally responsible, knowingly took a motor vehicle from the person or the immediate presence of Jose Rodriguez; and

Second: That the defendant, or one for whose conduct he is legally responsible, did so by the use of force or by threatening the imminent use of force; and

Third: That the defendant, or one for whose conduct he is

legally responsible, carried on or about his person or was otherwise armed with a dangerous weapon at the time of the taking.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.”

The instruction based on IPI Criminal 4th No. 14.24 was given over defendant’s objection concerning the instruction’s accountability language.

¶ 73 The trial court also gave a jury instruction based on IPI Criminal 4th No. 4.17: “An object or an instrument which is not inherently dangerous may be a dangerous weapon depending on the manner of its use and the circumstances of the case.”

¶ 74 On August 11, 2010, the jury found defendant guilty of armed robbery, aggravated vehicular hijacking, and aggravated kidnaping, and the trial court entered judgment on the verdict. Defendant filed a posttrial motion for a new trial, which the trial court denied.⁵ On September 20, 2010, after hearing factors in aggravation and mitigation, including the fact that defendant had no prior criminal record, defendant was sentenced to concurrent sentences of 15

⁵ Although the copy of the motion for a new trial included in the record on appeal does not contain a file stamp from the clerk of the circuit court, neither party argues on appeal that the motion was not filed.

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years for the aggravated vehicular hijacking, 15 years for the armed robbery, and 20 years for the aggravated kidnaping.

¶ 75 Defendant timely appealed, and this appeal follows.

¶ 76 ANALYSIS

¶ 77 On appeal, defendant claims: (1) Detective Reiff’s testimony that, after speaking with Lara, he was able to connect defendant’s name to the nickname “Pepe” was improper hearsay; and (2) the jury was improperly instructed on the elements of armed robbery and aggravated vehicular hijacking. We consider each argument in turn.

¶ 78 I. Hearsay

¶ 79 Defendant first claims that Detective Reiff’s testimony that he was able to connect defendant’s name with the nickname “Pepe” after speaking with Lara was improper hearsay. In the alternative, he argues that trial counsel was ineffective for failing to seek a limiting instruction that the jury could not consider the evidence of how police obtained defendant’s name in determining his guilt.

¶ 80 As an initial matter, the State claims that defendant has forfeited this claim on appeal because he failed to object to Detective Reiff’s testimony at trial. Illinois law is clear that both an objection and a written posttrial motion raising an issue are necessary to preserve an error for appellate review. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (“Both a trial objection and a written post-trial motion raising the issue are required for alleged errors that could have been raised during trial.” (Emphases in original.)). However, defendant claims that this claim is properly preserved because he filed a motion *in limine* prior to trial and so was not required to

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also object during trial.

¶ 81 The Illinois Supreme Court has held that a defendant may properly preserve an issue for review by raising it in a motion *in limine* and in his posttrial motion. *People v. Hudson*, 157 Ill. 2d 401, 434-35 (1993); *People v. Bocclair*, 129 Ill. 2d 458, 476 (1989). See also *People v. Maldonado*, 398 Ill. App. 3d 401, 415 (2010); *People v. Brown*, 319 Ill. App. 3d 89, 96 (2001). Here, defendant raised the issue both in his motion *in limine* and in his posttrial motion, thereby properly preserving it. We note that the State cites two cases to support its argument that an objection was required in addition to the motion *in limine*. However, both of the State's cited cases rely on civil cases for this proposition of law. See *People v. Dresher*, 364 Ill. App. 3d 847, 857 (2006) (citing *Krklus v. Stanley*, 359 Ill. App. 3d 471, 486 (2005)); *People v. Pantoja*, 231 Ill. App. 3d 351, 353 (1992) (citing *Cunningham v. Miller General Insurance Co.*, 227 Ill. App. 3d 201, 206 (1992), and *Romanek-Golub & Co. v. Anvan Motel Corp.*, 168 Ill. App. 3d 1031, 1040 (1988)). While more stringent requirements may apply in the civil context (see *Simmons v. Garces*, 198 Ill. 2d 541, 569 (2002); *Illinois State Toll Highway Authority v. Heritage Standard Bank & Trust Co.*, 163 Ill. 2d 498, 502 (1994) (“In civil cases such as this, the law is well established that the denial of a motion *in limine* does not preserve an objection to disputed evidence later introduced at trial.”)), in the case at bar, we apply the rule of law set forth by our supreme court in *Hudson* and proceed to consider the merits of defendant's claim.

¶ 82 A. Admissibility of Testimony

¶ 83 Defendant claims that Detective Reiff's testimony that he “ha[d] a name” associated with the nickname “Pepe” after speaking with suspect Lara was inadmissible hearsay and warrants a

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new trial. A police officer's testimony recounting the steps taken during the course of an investigation is admissible and does not violate a defendant's sixth amendment confrontation rights "even though the officer's description of the progress of the case might suggest that nontestifying witnesses implicated the defendant." *People v. Johnson*, 116 Ill. 2d 13, 24 (1987); see also *People v. Henderson*, 142 Ill. 2d 258, 304 (1990); *People v. Gacho*, 122 Ill. 2d 221, 248 (1988). " "Such testimony is not hearsay because it is based on the officers' own personal knowledge, and is admissible although the inference logically to be drawn therefrom is that the information received motivated the officers' subsequent conduct.' " *Gacho*, 122 Ill. 2d at 248 (quoting *People v. Hunter*, 124 Ill. App. 3d 516, 529 (1984)). However, the police officer's testimony may not go beyond outlining the steps of the investigation to reveal the substance of the nontestifying witness' statement, which would be considered inadmissible hearsay. *Henderson*, 142 Ill. 2d at 304; *Gacho*, 122 Ill. 2d at 248; *Johnson*, 116 Ill. 2d at 24. See also *People v. Sample*, 326 Ill. App. 3d 914, 920-21 (2001).

¶ 84 During his testimony, Detective Reiff testified concerning his interview with Lara:

"Q. Did you speak with Luis Lara that afternoon at about --

I'm [*sic*] am sorry -- 5:14 in the afternoon?

A. Yes.

Q. Okay. And after you spoke with Luis Lara, did you go to your computer?

A. Yes, at some point, yes.

Q. Okay. After speaking with Luis Lara did you have a

name, a full name, associated with the nickname [P]epe?

A. Yes.

Q. And what was that name?

A. Jose Valdovinos.” (Emphasis added.)

Additionally, the State referenced this testimony during its closing argument, when the prosecutor recounted Reiff’s investigation. The prosecutor stated that, after Reiff spoke with Rodriguez and interviewed employees at El Plan bar, “[a]ll he knows now is he is looking for Pepe.” Directly after that, the prosecutor stated that Reiff returned to the police station and interviewed the individuals in custody. At that point, “[Detective Reiff] interviews offender Lara. He interviews all the offenders in custody. But he interviews Lara and he knows who he is looking for, Jose Valdovinos. The investigation continues, but now they have a name.”

¶ 85 Defendant argues that Reiff’s testimony “conveyed the substance of Lara’s statement” and was therefore inadmissible hearsay, warranting a new trial. We note that even a determination that Reiff’s testimony went beyond simply recounting the steps of his investigation would not necessarily result in a new trial. “Erroneous admission of hearsay will not be held reversible if there is no reasonable probability the jury would have acquitted the defendant had the hearsay been excluded.” *People v. Warlick*, 302 Ill. App. 3d 595, 601 (1998) (citing *People v. West*, 234 Ill. App. 3d 578, 590 (1992)); *People v. Yancy*, 368 Ill. App. 3d 381, 385 (2005); *People v. Jura*, 352 Ill. App. 3d 1080, 1089 (2004); *Sample*, 326 Ill. App. 3d at 924-25.

¶ 86 In the case at bar, any error in permitting Detective Reiff to testify about his conversation with Lara was harmless. Reiff testified that, after speaking with Lara, he was able to connect the

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nickname “Pepe” with the name “Jose Valdovinos.” However, the same information was revealed during trial by several different sources, including by defendant himself. First, Rodriguez testified that he was acquainted with defendant prior to his kidnaping and knew defendant as Pepe; Rodriguez also identified defendant in a lineup. Next, Patricia Gutierrez, a defense witness, testified that defendant’s nickname was Pepe. Finally, defendant admitted that his nickname was Pepe and corroborated Rodriguez’s testimony that they knew each other from playing pool at El Plan bar and that he was known to Rodriguez as Pepe. Thus, even if Reiff had not testified about his conversation with Lara, the jury would have heard at least three times that defendant was Pepe. Accordingly, any error in permitting Reiff’s testimony was harmless and does not warrant reversal. See *People v. Monroe*, 366 Ill. App. 3d 1080, 1091 (2006) (finding improperly admitted hearsay testimony harmless because it was cumulative of other trial testimony).

¶ 87

B. Ineffective Assistance of Counsel

¶ 88 Similarly, defendant’s argument that his trial counsel was ineffective for failing to seek a limiting instruction is unpersuasive. The Illinois Supreme Court has held that, to determine whether a defendant was denied his or her right to effective assistance of counsel, an appellate court must apply the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Colon*, 225 Ill. 2d 125, 135 (2007) (citing *People v. Albanese*, 104 Ill. 2d 504 (1984) (adopting *Strickland*)). Under *Strickland*, a defendant must prove both (1) his attorney’s actions constituted errors so serious as to fall below an objective standard of reasonableness; and (2) absent these errors, there was a reasonable probability that his trial would have resulted in a

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different outcome. *People v. Ward*, 371 Ill. App. 3d 382, 434 (2007) (citing *Strickland*, 466 U.S. at 687-94).

¶ 89 Under the first prong of the *Strickland* test, the defendant must prove that his counsel's performance fell below an objective standard of reasonableness "under prevailing professional norms." *Colon*, 225 Ill. 2d at 135; *People v. Evans*, 209 Ill. 2d 194, 220 (2004). Under the second prong, the defendant must show that, "but for" counsel's deficient performance, there is a reasonable probability that the result of the proceeding would have been different. *Colon*, 225 Ill. 2d at 135; *Evans*, 209 Ill. 2d at 220. "[A] reasonable probability that the result would have been different is a probability sufficient to undermine confidence in the outcome—or put another way, that counsel's deficient performance rendered the result of the trial unreliable or fundamentally unfair." *Evans*, 209 Ill. 2d at 220; *Colon*, 225 Ill. 2d at 135. In other words, the defendant was prejudiced by his attorney's performance.

¶ 90 To prevail, the defendant must satisfy both prongs of the *Strickland* test. *Colon*, 225 Ill. 2d at 135; *Evans*, 209 Ill. 2d at 220. "That is, if an ineffective-assistance claim can be disposed of because the defendant suffered no prejudice, we need not determine whether counsel's performance was deficient." *People v. Graham*, 206 Ill. 2d 465, 476 (2003). We do not need to consider the first prong of the *Strickland* test when the second prong cannot be satisfied. *Graham*, 206 Ill. 2d at 476.

¶ 91 In the case at bar, as noted, the presence of Detective Reiff's testimony did not have an effect on the outcome of the trial, since the same information was given to the jury no less than three times, including by defendant himself. Thus, even if a limiting instruction had been sought

by trial counsel and given by the trial court, there is no reasonable probability that a limiting instruction would have resulted in a different outcome. Defendant was positively identified by the victim, who knew defendant, and the jury made its credibility determinations after hearing the victim's testimony and the testimony of defendant, his girlfriend, and the girlfriend's sister.

¶ 92

II. Jury Instructions

¶ 93 Defendant also claims that the jury was improperly instructed on the elements of armed robbery and aggravated vehicular hijacking and asks us to reverse his convictions on those counts. Defendant's argument is premised on the fact that the jury instructions were based on prior versions of statutes that had been amended and so he was "found guilty of nonexistent offenses." We note that neither party requests a new trial on this issue, which makes sense: defendant does not seek a new trial because, if he received one, he would be subject to a mandatory 15-year firearm enhancement on the two counts, which was not imposed by the trial court below; and the State has no need to request a new trial because defendant is already serving a 20-year sentence for the aggravated kidnaping and all the sentences run concurrently. Accordingly, the question we consider is the one the parties ask us to consider, namely, whether the error in jury instructions warrants an outright reversal of defendant's convictions for armed robbery and aggravated vehicular hijacking.

¶ 94 The question of whether jury instructions accurately conveyed the applicable law is reviewed *de novo*. *People v. Parker*, 223 Ill. 2d 494, 501 (2006). *De novo* consideration means we perform the same analysis that a trial judge would perform. *Khan v. BDO Seidman, LLP*, 408 Ill. App. 3d 564, 578 (2011). In the case at bar, there is no question that the jury was instructed

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pursuant to the earlier versions of the armed robbery and aggravated vehicular hijacking statutes instead of the amended versions, which were in effect at the time of defendant's offense and trial. The version which was in effect at the time of defendant's offense is contained in the 2004 bound volumes of the Code.

¶ 95 A. Statutes Involved

¶ 96 Defendant was indicted, and the order of commitment and sentence was entered, for armed robbery under section 18-2(a)(2) of the Criminal Code of 1961 (the Code) (720 ILCS 5/18-2(a)(2) (West 2004)) and for aggravated vehicular hijacking under section 18-4(a)(4) of the Code (720 ILCS 5/18-4(a)(4) (West 2004)).⁶ Section 18-2 of the 2004 version of the Code provides, in relevant part:

“(a) A person commits armed robbery when he or she violates Section 18-1; and

(1) he or she carries on or about his or her person or is otherwise *armed with a dangerous weapon other than a firearm*; or

(2) he or she carries on or about his or her person or otherwise *armed with a firearm*[.]

* * *

⁶ Defendant was also convicted of aggravated kidnaping under section 10-2(a)(1) of the Code (720 ILCS 5/10-2(a)(1) (West 2004)), but that conviction is not at issue for the instant analysis.

(b) Sentence. Armed robbery in violation of subsection (a)(1) is a Class X felony. A violation of subsection (a)(2) is a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court.” (Emphases added.) 720 ILCS 5/18-2 (West 2004).

Section 18-4 of the 2004 version of the Code provides, in relevant part:

“(a) A person commits aggravated vehicular hijacking when he or she violates Section 18-3; and

* * *

(3) he or she carries on or about his or her person, or is otherwise *armed with a dangerous weapon, other than a firearm*; or

(4) he or she carries on or about his or her person or is otherwise *armed with a firearm*[.]

* * *

(b) Sentence. *** Aggravated vehicular hijacking in violation of subsection (a)(3) is a Class X felony for which a term of imprisonment of not less than 7 years shall be imposed. Aggravated vehicular hijacking in violation of subsection (a)(4) is a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court.” (Emphases added.) 720

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ILCS 5/18-4 (West 2004).

The quoted statutes have been in effect since January 1, 2000. Prior to that date, section 18-2 provided:

“(a) A person commits armed robbery when he or she violates Section 18-1 while he or she carries on or about his person, or is otherwise *armed with a dangerous weapon*.”

(Emphasis added.) 720 ILCS 5/18-2 (West 1998).

Section 18-4 provided:

“(a) A person commits aggravated vehicular hijacking when he or she violates Section 18-3; and

* * *

(3) he or she carries on or about his person, or is otherwise *armed with a dangerous weapon*.” (Emphasis added.) 720 ILCS 5/18-4 (West 1998).

In sum, the prior statutes referred to being “armed with a dangerous weapon” (720 ILCS 5/18-2, 18-4 (West 1998)), while the amended statutes have separate subsections for “armed with a dangerous weapon, other than a firearm” and for “armed with a firearm” (720 ILCS 5/18-2, 18-4 (West 2004)).⁷

⁷ Although not mentioned by the parties, the amended statutes also include a mandatory 15-year sentencing enhancement for the offenses committed while armed with a firearm. 720 ILCS 5/18-2(b), 18-4(b) (West 2004).

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¶ 97 As noted, there is no question that the jury received jury instructions based on the prior versions of the statutes. Thus, the jury instructions required the jury to consider whether defendant was “armed with a dangerous weapon” and did not make any distinction between a firearm or any other type of weapon. Defendant argues that, since the jury was not asked to determine whether he was armed with a firearm, the jury did not find him guilty of armed robbery under section 18-2(a)(2) or aggravated vehicular hijacking under section 18-4(a)(4). Instead, the jury found him guilty of offenses that no longer exist.

¶ 98 B. Forfeiture

¶ 99 The State claims that defendant has forfeited review of this issue by failing to object to the jury instructions and raise the issue in his posttrial motion. Defendant argues that his claim may be raised for the first time on appeal because it is akin to a reasonable-doubt claim and is also a challenge to void convictions, neither of which is subject to forfeiture. Alternatively, defendant asks us to review his claim for plain error. We do not find defendant’s arguments against forfeiture persuasive because we cannot find defendant’s convictions void. He was indicted under the amended statutes; the jury found him guilty of “[a]rmed [r]obbery” and “[a]ggravated [v]ehicular [h]ijacking,” which are existing offenses under the amended statutes; and the order of commitment and sentence lists the amended statutes. Thus, this situation is distinguishable from those cases cited by defendant in which a defendant’s convictions have been found void. *People v. Taylor*, 314 Ill. App. 3d 943, 945 (2000) (defendant was indicted and pleaded guilty to an offense that did not exist); *People v. Wagner*, 89 Ill. 2d 308, 311 (1982) (defendant convicted under unconstitutional statute); *People v. Edge*, 406 Ill. 490, 494 (1950)

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(judgment of conviction entered on an information that did not charge all of the elements of a criminal offense).

¶ 100 As noted, both an objection and a written posttrial motion raising an issue are necessary to preserve an error for appellate review. *Enoch*, 122 Ill. 2d at 186. This principle applies to errors in jury instructions as well as to other trial errors. See *People v. Herron*, 215 Ill. 2d 167, 175 (2005) (“Generally, a defendant forfeits review of any putative jury instruction error if the defendant does not object to the instruction or offer an alternative instruction at trial and does not raise the instruction issue in a posttrial motion.”); *Parker*, 223 Ill. 2d at 507. However, Supreme Court Rule 451(c) provides that “substantial defects” in criminal jury instructions “are not waived by failure to make timely objections thereto if the interests of justice require.” Ill. S. Ct. R. 451(c) (eff. July 1, 2006). “Rule 451(c)’s exception to the waiver rule for substantial defects applies when there is a grave error or when the case is so factually close that fundamental fairness requires that the jury be properly instructed.” *People v. Hopp*, 209 Ill. 2d 1, 7 (2004) (citing *People v. Thurman*, 104 Ill. 2d 326, 329-30 (1984), and *People v. Huckstead*, 91 Ill. 2d 536, 544 (1982)). “Rule 451(c) is coextensive with the ‘plain error’ clause of Supreme Court Rule 615(a), and we construe these rules ‘identically.’” *Herron*, 215 Ill. 2d at 175 (quoting *People v. Armstrong*, 183 Ill. 2d 130, 151 n.3 (1998)).

¶ 101 The “plain error” clause of Supreme Court Rule 615(a) provides that “[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court.” Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999). “[T]he plain-error doctrine allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the

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evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence.” *People v.*

Piatkowski, 225 Ill. 2d 551, 565 (2007). In a plain error analysis, “it is the defendant who bears the burden of persuasion.” *People v. Woods*, 214 Ill. 2d 455, 471 (2005). However, in order to find plain error, we must first find that the trial court committed some error. *Piatkowski*, 225 Ill. 2d at 565 (“the first step is to determine whether error occurred”).

¶ 102 In the case at bar, there is no question that the jury was instructed under an earlier version of the armed robbery and aggravated vehicular hijacking statutes and, therefore, was not asked to specifically find that defendant was armed with a firearm. Thus, since we find error, we proceed to the question of whether the error rises to the level of plain error. “[A] jury instruction error rises to the level of plain error only when it ‘creates a serious risk that the jurors incorrectly convicted the defendant because they did not understand the applicable law, so as to severely threaten the fairness of the trial.’ ” *Herron*, 215 Ill. 2d at 193 (quoting *Hopp*, 209 Ill. 2d at 8).

¶ 103 C. Aggravated Vehicular Hijacking

¶ 104 In the case at bar, we cannot find that the error in jury instructions rose to the level of plain error. Concerning the count of aggravated vehicular hijacking, although the jury was asked to determine whether defendant was “armed with a dangerous weapon” and was not asked to determine whether defendant was “armed with a firearm,” under the facts before it, the jury’s guilty verdict nevertheless indicates that it found that defendant was armed with a firearm. The

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jury was instructed:

“To sustain the charge of aggravated vehicular hijacking, the State must prove the following propositions:

First: That the defendant, or one for whose conduct he is legally responsible, knowingly took a motor vehicle from the person or the immediate presence of Jose Rodriguez; and

Second: That the defendant, or one for whose conduct he is legally responsible, did so by the use of force or by threatening the imminent use of force; and

Third: That the defendant, or one for whose conduct he is legally responsible, carried on or about his person or was otherwise armed with a dangerous weapon at the time of the taking.

If you find from your consideration of all the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty.

If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.”

Thus, the guilty verdict on the aggravated vehicular hijacking count was necessarily based on conduct that occurred when defendant “knowingly took a motor vehicle from the person or the immediate presence of Jose Rodriguez.” Examining Rodriguez’s testimony, the only possible

“dangerous weapon” present during that part of the night was the handgun that Rodriguez testified defendant pointed at him. Thus, it follows that, in finding that defendant was “armed with a dangerous weapon” at the time Rodriguez’s vehicle was taken, the jury implicitly found that defendant was armed with a firearm. Accordingly, the error in the aggravated vehicular hijacking statute did not “ ‘create[] a serious risk that the jurors incorrectly convicted the defendant because they did not understand the applicable law, so as to severely threaten the fairness of the trial.’ ” *Herron*, 215 Ill. 2d at 193 (quoting *Hopp*, 209 Ill. 2d at 8). Therefore, the error in the aggravated vehicular hijacking jury instructions did not rise to the level of plain error and we affirm defendant’s conviction on that count.

¶ 105 As noted, although the parties do not raise the issue, the aggravated vehicular hijacking statute imposes a mandatory 15-year sentencing enhancement for violations of section 18-4(a)(4) of the Code. 720 ILCS 5/18-4(b) (West 2004) (“Aggravated vehicular hijacking in violation of subsection (a)(4) is a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court.”). This enhancement was not imposed by the trial court, which sentenced defendant to a total of 15 years in the Illinois Department of Corrections for the aggravated vehicular hijacking. However, since the jury did not make a specific and separate finding that defendant was armed with a firearm, and in light of *Apprendi v. New Jersey*, 530 U.S. 466 (2000), we will not *sua sponte* correct the mittimus to impose the enhancement.

¶ 106 D. Armed Robbery

¶ 107 We also cannot find that the error in the armed robbery jury instructions rose to the level of plain error. Although the jury did not specifically find that defendant was armed with a

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firearm, there is sufficient evidence in the record to support such a finding. Rodriguez testified that defendant threatened him with a firearm; Officer Dowling also testified that several bullets were recovered from the apartment. Additionally, during closing argument, defense counsel told the jury: “In order for you to return a guilty verdict on the armed robbery charge, you have to believe that Mr. Rodriguez actually saw a gun.” Based on this evidence, a rational juror could certainly have found that defendant was armed with a firearm. *People v. Smith*, 185 Ill. 2d 532, 541 (1999) (when reviewing the sufficiency of the evidence in a criminal case, a reviewing court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt).

¶ 108 Moreover, even if the jury did not find that defendant was armed with a firearm, there is sufficient evidence to support a finding that defendant was armed with a dangerous weapon other than a firearm. Rodriguez testified that he was beaten with a baseball bat by defendant and the tattooed man, and his testimony was corroborated both by his injuries and by the baseball bat recovered from the apartment. Thus, a rational juror could have found that defendant was armed with a dangerous weapon other than a firearm. *People v. Skelton*, 83 Ill. 2d 58, 65 (1980) (although not deadly *per se*, a baseball bat may be a dangerous weapon because of its capacity to inflict serious harm).

¶ 109 In short, although the jury was asked to determine only whether defendant was “armed with a dangerous weapon” and was not asked to specify whether the “dangerous weapon” was a firearm or something other than a firearm, there was sufficient evidence to convict defendant of

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armed robbery either way. Additionally, since the trial court did not impose the mandatory 15-year firearm enhancement, defendant did not receive a harsher sentence based on the type of weapon involved. Finally, the presence or absence of a dangerous weapon was not the focus of the trial. Instead, the main issue was defendant's participation; indeed, during closing argument, defense counsel noted, "I don't think you need to tell me what the disputed issue of fact is. Very simply, is this the right guy or isn't it?" Thus, we cannot find that there was a serious risk that defendant was incorrectly convicted based on the error in the armed robbery jury instructions. Accordingly, the error does not rise to the level of plain error and we affirm defendant's conviction for armed robbery.

¶ 110

CONCLUSION

¶ 111 We find that any error in permitting a detective to testify that, after speaking with a suspect, he was able to connect defendant's name with the nickname "Pepe" is harmless, because the information was revealed to the jury by several sources, including by defendant's own trial testimony. We further find that, although the jury received erroneous jury instructions as to the counts of armed robbery and aggravated vehicular hijacking, the errors did not rise to the level of plain error.

¶ 112 Affirmed.