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SIXTH DIVISION
November 22, 2013

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|--------------------------------------|---|------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County |
| |) | |
| v. |) | No. 10 CR 9778 |
| |) | |
| KEVIN HENDERSON, |) | Honorable |
| |) | Thomas M. Davy, |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Rochford and Justice Reyes concurred in the judgment.

ORDER

¶ 1 *HELD:* (1) The State proved beyond a reasonable doubt that defendant was guilty of armed robbery; (2) defendant received effective assistance of counsel; (3) the State’s closing argument was proper; (4) the automatic transfer provision of the Juvenile Court Act of 1987 (705 ILCS 405/5-130 (West 2010)) is not unconstitutional; (5) the 15-year firearm sentencing enhancement is not unconstitutional; and (6) defendant’s three concurrent 25-year prison

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sentences were not excessive.

¶ 2 After a jury trial, defendant Kevin Henderson was convicted of three counts of armed robbery with a firearm and sentenced to three concurrent terms of 25 years in prison.

¶ 3 On appeal, defendant contends that: (1) the State failed to prove his guilt beyond a reasonable doubt where he provided reasonable alibi testimony and the eyewitnesses' identification testimony was unreliable; (2) trial counsel rendered ineffective assistance when she failed to introduce helpful available evidence, introduced an exhibit that undermined the alibi testimony, and acquiesced to the State's introduction of an audiotape, which harmed the alibi testimony and lacked a proper foundation; (3) the prosecution made improper remarks during closing argument that suggested intimidation of an eyewitness, speculated that young people work in groups to commit crimes, and argued that the burden of proof was unjustly placed on the State; (4) the automatic transfer provision of The Juvenile Court Act of 1987 (705 ILCS 405/5-130 (West 2010)) violates the due process clauses of the state and federal constitutions, the eighth amendment of the federal constitution, and the proportionate penalties clause of the state constitution where it resulted in defendant's transfer to adult court without a hearing and subjected him to more severe punishment; (5) the 15-year firearm sentencing enhancement to the crime of armed robbery is unconstitutional; and (6) defendant's three concurrent 25-year prison sentences are excessive.

¶ 4 For the reasons that follow, we affirm defendant's convictions and sentences.

¶ 5 I. BACKGROUND

¶ 6 On May 8, 2010, three Hispanic men were rehabbing an apartment building at 6131

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South Fairfield Avenue in Chicago. They telephoned 911 and reported that they were robbed by five black “guys” who wore blue, black and gray hooded sweatshirts (hoodies). In response to the 911 call, police officers, several minutes after the robbery, stopped defendant Henderson, codefendant Perrence Washington, and a third person outside a gas station a couple of blocks away from the robbery. The Hispanic men were taken to the gas station, where they identified defendant and codefendant as two of the offenders.

¶ 7 Defendant was charged with three counts of armed robbery with a firearm, three counts of aggravated unlawful restraint, and three counts of aggravated battery. Defendant and codefendant Washington were both 15 years old, and, due to their age and the nature of the offense, their cases were automatically transferred to adult criminal court, pursuant to section 5-130 of the Juvenile Court Act of 1987 (705 ILCS 405/5-130 (West 2010)). Defendant moved the court to declare the automatic transfer statute unconstitutional, but the trial court denied the motion after a hearing. A joint jury trial was held for defendant and codefendant Washington in June 2011.

¶ 8 Jose Velasquez, Sr., testified for the State that, at the time of the offense, he was rehabbing an apartment building with his teenage son, Jose Velasquez, Jr., and Cesar Serrano, an employee who spoke no English. Jose Sr. had about \$1,800 in his back pocket because he had collected rent from tenants earlier that day. At about 6:30 p.m., near the end of the workday, Jose Jr. was working alone on the first floor while Jose Sr. and Serrano were in the basement.

¶ 9 Jose Sr. heard footsteps upstairs and then saw Jose Jr. come down the basement stairs with a male who held a gun to Jose Jr.’s head. The gunman wore a dark hoodie and tried to

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conceal his face by pulling the hood over his head. Three other offenders also entered the basement and they tried to conceal their faces by pulling their hoods over their faces. The basement was illuminated by four 100 watt light bulbs. At gunpoint, the offenders pushed Jose Sr., Jose Jr., and Serrano to the floor. The offenders demanded the victims' valuables, searched their pockets, and took their keys, money, cell phones and jewelry. Jose Sr. saw the face of the gunman six or seven times because he uncovered his face when he demanded the victims' money and belongings. The basement was well lit, and Jose Sr. was face to face with the gunman when he revealed his face.

¶ 10 In court, Jose Sr. identified codefendant Washington as the gunman and defendant Henderson as the offender who searched Jose Sr.'s pockets. Jose Sr. saw defendant Henderson's face five or six times because he let go of his hood while he used both hands to search Jose Sr. After the offenders found the \$1,800 in Jose Sr.'s back pocket, somebody said, "Kill them, kill them, kill them." So, Jose Sr. stopped cooperating and jumped on codefendant Washington, who had the gun. The other offenders kicked and punched Jose Sr., who pushed and fought them while he struggled to get out of the basement and yell for help. During the struggle, the offenders did not use their hands to pull their hoods to conceal their faces, so Jose Sr. was able to see their faces.

¶ 11 Outside, Jose Sr. yelled for help. Two offenders ran toward the alley while the other two offenders ran to the front of the property and went south on Fairfield Avenue towards 62nd Street. Jose Sr. chased the latter two offenders for half a block and told them that he saw their faces. Jose Sr. was bleeding from his mouth, his top front teeth were pushed in, and he had

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bruises on his legs, arm and cheek. He returned to the scene. Serrano retrieved his cell phone from the truck, and Jose Sr. used it to call the police. The police, who were driving a black SUV with tinted windows, arrived in less than five minutes. Jose Sr. gave the police a description of the offenders, and the police left. The police returned in less than two minutes and took Jose Sr. to a showup about two blocks away at a gas station on the corner of 63rd Street and California Avenue.

¶ 12 At the showup, Jose Sr. remained inside the stopped SUV while defendant Henderson, codefendant Washington and another man stood about 10 feet away. Police officers were with the suspects, whose hands were behind them and thus not visible to Jose Sr. Jose Sr. told the police that he was 100% certain that codefendant Washington was the gunman and defendant Henderson was the offender who had searched Jose Sr.'s and Serrano's pockets. Codefendant Washington was wearing the same dark-colored hoodie he had worn during the offense in the basement, and defendant was wearing the same lighter colored, patterned hoodie that he had worn during the offense. Jose Sr. told the police that the third man was too old to be one of the offenders and Jose Sr. did not recognize his face. No more than 5 to 7 minutes had elapsed from the time of the robbery to the showup. None of the property stolen from Jose Sr. was ever returned to him.

¶ 13 On cross-examination, Jose Sr. acknowledged that immediately after the offense he initially told the police at the scene that five black males had robbed him and they wore dark hoodies. At the trial, he explained that the offenders were moving around so fast during the offense, he was "crazy," his life was on the line, and he was worried about his son. However,

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after the offense, he relaxed and was certain that there were four offenders.

¶ 14 Jose Jr. testified that he was 18 years old. At the time of the offense, he was installing a light fixture in a closet on the first floor. He was on a ladder and heard footsteps. He saw four “guys” enter the room, and they were covering their faces with their hoodies. One offender told Jose Jr. to get off the ladder and pointed a gun at him. The three other offenders grabbed Jose Jr., pulled the hood of his sweatshirt down over his face, searched him, and took his cell phone and wallet. In court, Jose Jr. identified defendant Henderson as one of the offenders and codefendant Washington as the gunman.

¶ 15 Jose Jr. testified that codefendant Washington put the gun to Jose Jr.’s head and asked where the other workers and the money were located. While Jose Jr. walked to the basement, codefendant Washington walked beside him with the gun, and defendant and the two other offenders followed. In the basement, codefendant Washington pushed Jose Jr. to the ground and pointed the gun at Jose Sr. and Serrano while the three other offenders searched the victims.

¶ 16 Jose Jr. lay face-down on the floor and was frightened. However, he “peeked” and saw codefendant Washington’s face while he pointed the gun at Jose Sr. and searched him. At the time, Jose Jr. was two feet away from codefendant Washington and saw “the bottom part” of his face; “because [codefendant Washington] had the hoodie,” “the side a little bit,” “almost like half” of his face was uncovered.

¶ 17 Initially, Jose Jr. testified that he never saw defendant Henderson’s face in the basement. Later, however, Jose Jr. testified that he saw the side of defendant Henderson’s face while he was kicking Jose Sr. At the time, Jose Jr. was about two feet away from defendant, who was wearing

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a beige or gray hoodie with a pattern that looked something like squares or checkers. Jose Jr.'s testimony concerning his father's struggle with the offenders was consistent with his father's testimony.

¶ 18 Jose Jr. testified that when the police drove him and Serrano to the showup in the SUV, he (Jose Jr.) already knew that his father had identified some offenders. At the gas station, Jose Jr. recognized defendant and codefendant and told the police that he was sure that they were the offenders. On cross-examination, Jose Jr. agreed with defense counsel's description that the three suspects in the showup were handcuffed to one another and the handcuffs were visible.

¶ 19 Through an interpreter, Serrano testified that when Jose Jr. entered the basement, codefendant Washington held the gun to Jose Jr.'s head, which was tilted all the way towards his shoulder. Three other offenders entered behind them. Serrano did not understand the offenders' orders, so codefendant Washington, whose dark-colored hood covered the top of his forehead, pointed the gun at Serrano, who looked directly at Washington's face. Serrano was only three or four feet away from Washington, who walked closer to Serrano and held the gun against his head. Washington had been holding his shirt up over his mouth and nose, but he lowered it when he yelled at Serrano, saying, "Put to the ground down, or I will kill you mother f***er."

¶ 20 Serrano testified that the offenders threw him to the ground, and someone put his knee on Serrano's head. The gun was held against Serrano's head while the offenders searched him and took his keys. Then, the offenders searched Jose Sr., and Serrano turned to look at them.

Serrano saw defendant Henderson's whole face completely three times. Defendant wore a light-colored hoodie that had "a different design than the other ones." The design "was like lines with

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squares.” The offenders struggled with Jose Sr. because they thought he had more money and were trying to get it from him. The offenders kept moving around, and it was chaotic. During that struggle, Serrano saw codefendant Washington’s face three more times; he was only three feet away from Serrano. When an offender said something like, “kill ’er,” Jose Sr. started to fight with two offenders and make his way out of the basement while the other two offenders still restrained Serrano and Jose Jr. The two remaining offenders fled, and Serrano and Jose Jr. joined Jose Sr. outside.

¶ 21 Serrano testified that when Jose Sr. returned from the showup, he explained to Serrano in Spanish that the police would take him to see two or three people to see if he recognized anyone as one of the offenders. At the gas station, Serrano viewed three people and recognized codefendant Washington as the gunman and defendant Henderson as one of the offenders. They were wearing the same clothes they wore during the robbery, and Serrano was completely certain about his identification of them. At that time, Serrano did not know that Jose Sr. had already identified defendant and codefendant in the showup. Jose Jr. was with Serrano during the showup. Serrano did not remember whether the three suspects in the showup were handcuffed because he focused on their faces.

¶ 22 Chicago police Officer James Johnson testified that the call about the robbery came over the radio at 6:39 p.m. He, his partner, and his sergeant drove in a black, unmarked SUV and arrived at the scene at 6:41 p.m. A man standing at the curb informed them that he was just robbed. Officer Johnson asked what the offenders looked like and where they went, and the man stated they were five young black males wearing blue hoodies, black hoodies, and gray hoodies

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and they ran south on Fairfield Avenue. Officer Johnson did not ask for further details because he wanted to get enough information as quickly as possible so the police could begin to tour the area.

¶ 23 The police drove south on Fairfield Avenue, and several people—about two adults and some children—near the corner of 62nd Street pointed in the direction of California Avenue. Officer Johnson had grown up in that neighborhood and knew that “younger guys” always hung out at the gas station at 63rd Street and California Avenue, so the officers drove there. As they approached, they saw three young black males who matched the victim’s description and were standing on the curb by the gas station’s mini-mart. Two suspects wore dark hoodies, and one wore a grayish hoodie. The officers detained the three suspects at 6:45 p.m., and Officer Johnson drove back to the scene to take Jose Sr. to the showup.

¶ 24 Officer Johnson testified that when Jose Sr. viewed the suspects at the gas station, he immediately identified codefendant Washington in the dark hoodie and defendant Henderson in the gray hoodie as the offenders. The third male in the showup was 25 years old. Jose Sr. confirmed to Officer Johnson that he was 100% certain about his identification of the offenders and stated that Jose Jr. and Serrano also observed the offenders. Officer Johnson returned to the scene and then brought Jose Jr. and Serrano to the showup. Jose Sr. sat with them in the back seat of the SUV.

¶ 25 At the gas station, Officer Johnson asked Jose Jr. and Serrano if they recognized anyone. Jose Jr. identified codefendant in the black hoodie and defendant in the gray hoodie as the offenders. Then, in broken English, Serrano identified codefendant and defendant as the

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offenders. Officer Johnson asked Jose Sr. to ask Serrano in Spanish if he was 100% certain about his identification, and Serrano stated that he was 120% certain. Defendant and codefendant were arrested at 6:52 p.m. At 6:57 p.m., they were transported to the station in a marked blue and white police car. On cross-examination, Officer Johnson acknowledged that his report did not indicate that Jose Sr. had described the offenders as young.

¶ 26 For the defense, Shantel Williams testified that she was twelve years old and defendant was her cousin. On the evening of the offense, she and defendant were at her house, located at 6238 S. California Avenue, which was three houses down from the gas station and mini-mart. Her mother, grandmother, grandmother's boyfriend, brother, and cousins were also at the house. Her mother, Antria Henderson, asked her to go to the mini-mart to buy bread, milk, and snacks and to the beauty supply store to buy hair gel and a comb. The beauty supply store was across the street from the mini-mart and closed at 7 p.m. Antria gave Shantel cash and her Link card. After *The Simpsons* television program ended, Shantel and defendant left the house at about 6:50 p.m. As defendant walked, he talked on his cell phone with codefendant Washington and asked him to meet defendant at the gas station. Shantel proceeded to the beauty supply store alone. Afterwards, she joined defendant and codefendant at the mini-mart across the street.

¶ 27 Shantel testified that they used Antria's Link card, which required a special password, to buy wheat bread, chips, juice and other junk food. As they left the mini-mart, the police "rolled up and started messing with them." According to Shantel, defendant turned to her to give her his juice, and the police told him, "You turn back around or I'm going to smack the shit out of you." Shantel thought two of the officers who exited the car were Mexican. She went home and told

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Antria the police were bothering defendant. Later, defendant called Antria on the telephone.

Antria did not go to the police station.

¶ 28 Shantel was interviewed by an assistant State's attorney (ASA) two days before the trial.

During cross-examination, she denied telling the ASA during the interview that the police car that pulled into the gas station was white with "Chicago Police" written on the side. She said that she bought the items at the mini-mart after 7 p.m. and the police arrived after 7 p.m.

¶ 29 Antria Henderson was Shantel's mother and defendant's aunt. She testified that defendant was at her house at 6:15 p.m., along with at least six other people. She wanted Shantel to buy the gel and comb at the beauty supply store before it closed, and gave her some cash.

Antria also gave her Link card to Shantel to buy bread, a two liter bottle of soda, and "some junk." Antria saw Shantel and defendant leave the house at 6:48 p.m. About five minutes later, Shantel returned home with the gel and comb from the beauty supply store, the bread from the mini-mart, and the Link card. Shantel never mentioned anything that happened at the gas station.

Antria ordered a detailed summary of her Link card charges, and her Link card was used at 7:04 p.m. at the mini-mart on the date of the offense. Initially, Antria testified that she did not remember getting a telephone call from defendant; however, on redirect examination, she testified that she remembered getting a telephone call at 7:05 p.m. from defendant, who was calling from the police car. Antria acknowledged that she never ordered a detailed summary of her phone records.

¶ 30 Gladys Henderson was defendant's grandmother. Gladys testified that, on the evening of the offense, she and her boyfriend were visiting Antria. Gladys was in the bedroom watching

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television and did not see anyone leave the house, but she was told that defendant and Shantel went to the store. Gladys saw defendant at about 6:30 p.m., before he went to the store. He came up from the basement, spoke to Gladys, and asked her for money. Shantel came back from the store at about 6:50 p.m. and told Gladys that the police “had” defendant. Gladys thought Antria ran to the gas station, but Gladys was not sure.

¶ 31 The parties entered into a stipulation that, if called to testify, Susan Stuki, a program director at the Illinois Department of Human Services, would testify that Antria’s Link card was used at 2810 West 63rd Street on May 8, 2010, at 7:04 p.m. for a \$3.88 purchase.

¶ 32 In the State’s rebuttal case, Chicago police detective Eric Chopp testified that he was present when ASA Leanna Rajk interviewed Shantel two days before the trial began. When ASA Rajk asked Shantel what she bought at the mini-mart, Shantel replied, “a glazed donut, a couple bags of hot chips and some ten-cent candies.” Shantel said she did not buy anything for her mother. After ASA Rajk again asked Shantel if she was sure about her answer, Shantel said that she was supposed to buy bread and milk for her mother but the mini-mart was out of those items. Detective Chopp also testified that when Shantel was asked what type of police car pulled into the gas station, she said the police car was blue and white and had “Chicago Police” written on the side.

¶ 33 Detective Chopp was also present when ASA Rajk interviewed Antria two days before the trial. Antria stated that she was on the computer when Shantel came home from the gas station and watched television. Antria stated that nothing eventful happened after Shantel came home from the gas station that day.

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¶ 34 Officer Johnson testified that when he pulled into the gas station and approached defendant, there were no other vehicles in the gas station at that time. He was driving a black Chevy Tahoe SUV that did not have “Chicago Police” written on the side. The State published an audio tape of the police radio transmissions. On the tape, Officer Johnson said that they were driving up to the scene of robbery at 6:40 p.m. Then he said that they had stopped a “couple possibles.” Then, there was a transmission that defendant and codefendant were being transported to the police station at 6:57 p.m. Officer Johnson testified that neither he, his partner, nor his sergeant ever threatened to cause physical violence to defendant. Moreover, neither Officer Johnson, his partner, nor his sergeant were Hispanic.

¶ 35 The jury found defendant guilty of three counts of armed robbery, three counts of aggravated battery, and three counts of unlawful restraint. The jury also made a finding that, during the commission of the offense of armed robbery, defendant, or one for whose conduct he was legally responsible, was armed with a firearm. The trial court sentenced defendant to three 25-year concurrent prison terms on the three armed robbery counts and merged the other counts.

¶ 36

II. ANALYSIS

¶ 37

A. Sufficiency of the Evidence

¶ 38 Defendant contends the State failed to prove beyond a reasonable doubt that he was guilty of armed robbery because defendant provided reasonable alibi testimony and the only evidence of his guilt came from unreliable witnesses who made their identifications at a suggestive showup. At the showup, defendant and codefendant were standing next to two police officers, and defendant contends that he and codefendant were handcuffed at the time. Moreover, nothing

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about defendant's or codefendant's appearance suggested they had recently been running, and no evidence indicated that they appeared nervous or tried to flee when the police approached them. Furthermore, no weapon or proceeds from the robbery were recovered on them. Defendant argues that eyewitness identifications are notoriously and inherently unreliable, and cross-racial identifications, as in this case where the victims were Hispanic and the offenders were African American, are even more likely to be unreliable. In addition, defendant asserts that he presented reasonable alibi evidence to support the conclusion that it would have been impossible for him and codefendant to have committed the crime.

¶ 39 When the sufficiency of the evidence is challenged, a criminal conviction will not be set aside unless the evidence, when viewed in the light most favorable to the prosecution, is so improbable or unsatisfactory that a rational trier of fact could not have found the essential elements of the crime beyond a reasonable doubt. *People v. Gilliam*, 172 Ill. 2d 484, 515 (1996). The reviewing court may not retry the defendant. *People v. Rivera*, 166 Ill. 2d 279, 287 (1995). The trier of fact determines the credibility of the witnesses, the weight given to their testimony, and the reasonable inferences drawn from the evidence. *People v. Enis*, 163 Ill. 2d 367, 393 (1994).

¶ 40 Identification by a single witness can sustain a conviction if the witness viewed the accused under circumstances sufficient to permit a positive identification and the witness is credible. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). "This is true even in the presence of contradicting alibi testimony, provided that the witness had an adequate opportunity to view the accused and that the in-court identification is positive and credible." *People v. Slim*, 127 Ill. 2d

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302, 307 (1989). “While the credibility of a witness is within the province of the trier of fact, and the finding of the jury on such matters is entitled to great weight, the jury’s determination is not conclusive.” *Smith*, 185 Ill. 2d at 542. A reviewing court “will reverse a conviction where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant’s guilt.” *Id.*

¶ 41 Showups have been justified where, *inter alia*, “a witness had an excellent opportunity to observe the defendant during the commission of the crime, *** or prompt identification was necessary for the police to determine whether or not to continue their search. *People v. Manion*, 67 Ill. 2d 564, 569-70 (1977). To determine the admissibility of suggestive out-of-court identification evidence, courts look at the totality of the circumstances. *Id.* at 571. “[E]vidence of an unnecessarily suggestive identification may nevertheless be admitted at trial if reliability of the identification, under the totality of circumstances, is shown.” *Id.* In assessing the reliability of an identification, courts look at: (1) the witness’s opportunity to view the suspect during the offense; (2) the witness’s degree of attention; (3) the accuracy of any prior description given; (4) the witness’s level of certainty at the time of the identification procedure; and (5) the length of time between the crime and the identification. *Id.*; *Slim*, 127 Ill. 2d at 307. “The presence of discrepancies or omissions in a witness’s description of the accused do not in and of themselves generate a reasonable doubt as long as a positive identification has been made.” *Slim*, 127 Ill. 2d at 309.

¶ 42 Defendant argues that the showup identification was unnecessarily suggestive because the police informed the victims that they were holding suspects for identification; the victims

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observed defendant and codefendant, whose hands may have been handcuffed at the time of the identification, being detained by two police officers at the gas station; and Jose Jr. already knew before he viewed the showup that Jose Sr. had identified offenders in the showup. Defendant also challenges the accuracy of the victims' perceptions because their overriding focus must have been fear for their own safety and witnesses tend to focus on the weapons involved in the crime rather than on the offenders' faces.

¶ 43 The same arguments defendant raises on appeal were made to the jury by trial counsel. The jury must resolve factual disputes and make credibility determinations, and the record establishes that the jury was fully aware of all of the impeachment issues in this case by defense counsel's cross-examination of the witnesses and arguments. The jury, however, necessarily rejected defendant's arguments because the jury found him guilty.

¶ 44 Here, the showup identification at the gas station was justified on the bases of both the witnesses' opportunity to view the offenders and the facilitation of the police search. *People v. Elam*, 50 Ill. 2d 214, 218 (1972) (prompt on-the-scene identifications are common in the apprehension of criminal offenders and even necessary). Concerning the reliability factors, all three victims had the opportunity to see defendant and codefendant in the basement during the commission of the robbery. Although the offenders tried to conceal their faces, they revealed their faces when they let go of their hoods to yell at the victims, search them, and fight with Jose Sr. Jose Sr. and Serrano testified that they had multiple opportunities to look at the faces of defendant and codefendant in the basement under good lighting conditions when the offenders were either standing right next to the victims or only two to four feet away from them. Although

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Jose Jr. initially testified that he never saw defendant's face in the basement, he later clarified that he saw the side of defendant's face from just two feet away when defendant was kicking Jose Sr. Moreover, each victim's identification corroborated those of the other victims.

¶ 45 The witnesses' degree of attention was more than casual or passing because defendant and codefendant were the clear focus of the witnesses' attention even if for only a short time.

Jose Sr. and Serrano testified that they looked at codefendant's face when he pointed the gun at them and when he yelled at them. The witnesses also looked at defendant's face when he used both hands to search their pockets. All the witnesses testified that they defied the offenders' orders not to look at their faces because the witnesses wanted to see who was robbing them and what was going on. As Jose Sr. chased two offenders from the scene, he yelled, "I see your faces."

¶ 46 Jose Sr.'s description of the offenders was accurate. Although he initially told the police right after the chaos that there were five offenders, after he calmed down, he was certain that there were four offenders. Jose Jr. and Serrano also were certain that there were four offenders. When Officer Johnson arrived at the scene, he needed a quick description of the offenders, and Jose Sr. told him the offenders were young black males who wore blue, black and gray hoodies. That description proved accurate at the showup when the three victims identified codefendant, who wore a black hoodie, and defendant, who wore a lighter colored hoodie with a pattern or design. In addition, all three victims demonstrated absolute certainty at the showup concerning their identifications of codefendant as the gunman and defendant as one of the offenders who had searched their pockets. All three victims excluded the third detained male, who was 25 years old,

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as being too old to be one of the offenders.

¶ 47 The evidence established that the call about the robbery came over the police radio at 6:39 p.m. and defendant and codefendant were transported to the police station after their arrest at 6:57 p.m. The extremely short lapse of time between the crime and the showup supports the reliability of the victims' identifications.

¶ 48 The out-of-court identifications, even though suggestive, were reliable under the totality of the circumstances. Accordingly, we do not find the identification evidence here so unsatisfactory as to justify a reasonable doubt as to defendant's guilt. *People v. Lewis*, 165 Ill. 2d 305, 357 (1995).

¶ 49 Finally, defendant contends that the alibi testimony of his cousin, aunt, and grandmother created a reasonable doubt as to his guilt. We disagree. "The weight to be given alibi evidence is a question of credibility for the tier of fact [citation], and there is no obligation on the tier of fact to accept alibi testimony over positive identification of an accused [citation]." *Slim*, 127 Ill. 2d at 315. The alibi testimony did not come from independent witnesses; the witnesses were close relatives of defendant. Furthermore, defendant's three alibi witnesses provided inconsistent testimony that undermined the alibi defense. Shantel's testimony was inaccurate as to times and the type of police car that came to the gas station. Antria's testimony was inaccurate as to times, and she contradicted Shantel's testimony about informing her of the occurrence at the gas station after Shantel returned home and about the items Shantel bought at the mini-mart. Gladys's testimony was weak where she did not see anyone leave the house. Her testimony that Antria ran out of the house after Shantel returned home contradicted Antria's testimony that Shantel came

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home, said nothing, and the evening was uneventful. Moreover, the credibility of Shantel and Antria was severely impeached during the State's rebuttal case, which showed that their trial testimony was inconsistent with the statements they had made to the ASA during interviews just two days before the trial.

¶ 50 From our examination of the record, we conclude that the findings of the jury do not raise a reasonable doubt as to defendant's identification and guilt.

¶ 51 B. Ineffective Assistance of Counsel

¶ 52 Defendant claims he was denied the right of effective assistance of counsel because counsel (1) failed to introduce evidence that defendant's hoodie was tested for blood and no blood was found; (2) introduced a stipulation about the Link card transaction that harmed rather than helped defendant's alibi; and (3) did not object to the State's introduction of the audiotape of the police radio transmission to show the time line of defendant's detention and arrest even though it undermined defendant's alibi. Defendant argues that the evidence was closely balanced at best and the accumulation of counsel's errors prejudiced his case so seriously as to require reversal. We disagree.

¶ 53 In order to obtain relief on his claims of ineffective assistance of counsel, defendant must satisfy the two-pronged test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984).

Specifically, defendant must show not only that his lawyer's performance fell below an objective standard of reasonableness, but also 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 687-89; *People v. Albanese*, 104 Ill. 2d 504, 525-27 (1984). The competence of counsel

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is assessed in light of counsel's total performance (*People v. Ayala*, 142 Ill. App. 3d 93, 99-100 (1986)), and there is a strong presumption that the conduct of counsel falls within the wide range of reasonable professional assistance (*Strickland*, 466 U.S. at 689). The prejudice prong of the *Strickland* test may be satisfied if defendant can show that counsel's deficient performance rendered the result of the trial unreliable or the proceeding fundamentally unfair. *People v. Evans*, 209 Ill. 2d 194, 220 (2004). The failure to satisfy either *Strickland* prong will preclude a finding of ineffective assistance of counsel. *People v. Johnson*, 368 Ill. App. 3d 1146, 1161 (2006).

¶ 54 First, defendant argues that his trial counsel was ineffective for failing to introduce relevant and available evidence that defendant's hoodie was tested for blood and no blood was found, even though Jose Sr. had testified that he was bleeding after the offense. Defendant argues his attorney was given the lab report but failed to present this available evidence in support of his defense of misidentification.

¶ 55 Decisions involving what evidence to present and which witnesses to call fall within the broad category of trial strategy and are not subject to a claim of ineffective assistance unless they deprive a defendant of a meaningful adversary proceeding. *People v. Hamilton*, 361 Ill. App. 3d 836, 847 (2005). "Neither mistakes in strategy nor the fact that another attorney with the benefit of hindsight would have handled the case differently indicates the trial lawyer was incompetent." *People v. Negron*, 297 Ill. App. 3d 519, 538 (1998).

¶ 56 According to the record, defendant's counsel informed the jurors during opening argument that evidence technicians were summoned in this case and swabs were done in an

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attempt to find DNA matches, but there was no evidence that tied defendant to the offense other than the showup. During closing argument, the defense argued that when defendant and codefendant were detained by the police, they did not have any blood on them even though there had been a fight. Assuming, *arguendo*, that counsel's performance was deficient for failing to present the lab results of the jacket testing, defendant has not met his burden to establish prejudice concerning any failure to introduce this evidence. The lack of blood on defendant's hoodie had little probative value concerning whether he was one of the offenders in the basement during the robbery. The victims identified defendant as the offender in the light-colored hoodie who had searched their pockets. None of the witnesses claimed that defendant either was the offender who specifically hit Jose Sr. in the mouth or was in such close contact with Jose Sr. during the struggle to get out of the basement that Jose Sr.'s blood would necessarily or even likely have gotten onto defendant's clothing. Although evidence of the lab results may have been relevant, it was not strong exculpatory evidence. We cannot conclude that counsel's decision not to use any jacket testing evidence constituted ineffective assistance of counsel where the evidence of defendant's guilt was overwhelming. As discussed in detail above, the three victims testified consistently and reliably that defendant was the offender in the light-colored hoodie with the pattern design, and defendant's alibi evidence was very weak and impeached.

¶ 57 Second, defendant argues trial counsel was ineffective for introducing the stipulation about the transaction on Antria Henderson's Link card at 7:04 p.m. on the day of the offense. Defendant complains that the stipulation did not help the defense but, rather, likely confused the jurors because it conflicted with Officer Johnson's testimony about the time line of events and

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with the testimony of Shantel and Antria. Specifically, Officer Johnson testified that defendant and codefendant were detained at 6:45 p.m. and transported from the gas station at 6:52 p.m., whereas Shantel and Antria claimed that defendant and Shantel did not even leave the house until either 6:48 or 6:50 p.m. Defendant also complains that counsel introduced this evidence without establishing any foundation for the reliability of what the evidence claimed to be.

¶ 58 The record refutes defendant's assertions that counsel's performance was deficient and that the outcome of the trial would have been different if counsel had not submitted the Link card stipulation into evidence. First, defendant's argument lacks merit because the stipulation concerning the Link card was generally consistent with Shantel's and Antria's testimony. Defendant's counsel can hardly be faulted for the fact that the State's evidence concerning the time line was much more persuasive than defendant's alibi evidence. Second, defendant does not acknowledge how his alibi witnesses undermined counsel's efforts concerning the Link card evidence. According to the record, defendant's counsel informed the jury during opening argument that they would hear evidence that defendant went to the mini-mart with his aunt Antria's Link card, met codefendant, paid for an item by using the link card himself, and then walked out of the mini-mart and was arrested. Counsel informed the jury that it would "hear about that Link card, and the way those transactions are recorded on the Link card."

¶ 59 During the first day of the trial, defendant's counsel asked the court if she could present, out of sequence, the testimony of Susan Stuki, a witness from the Department of Human Services, who would testify concerning the accuracy of the business record concerning the transaction on Antria's Link card on the evening of the offense. The trial court granted that

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request; however, at the end of that day, the trial court asked if there was a possibility that the parties could stipulate to Stuki's testimony. ASA Rajk stated that Stuki's testimony was not relevant because, contrary to defendant's claim in his opening statement, none of his alibi witnesses, whom ASA Rajk had recently interviewed, said that defendant used the Link card. In response, defendant's counsel stated:

“I have spoken to those witnesses, and they told me that he most certainly did use the Link card. And this is the first I have ever heard of them saying that he never used a Link card. So I will have to go and talk to my witnesses then and find out what the story is there. Because up until two seconds ago, I have always after talking to them about 30 times been told that he did in fact use a Link card.”

Thereafter, ASA Rajk told the court she would speak to witness Stuki and determine if the State could stipulate to her testimony.

¶ 60 The record indicates that the alibi witnesses were not forthcoming with defense counsel about their testimony, and their lack of candor affected the strategic options available to defense counsel after she had already told the jurors that they would hear exculpatory Link card evidence. After reviewing the record, we conclude that defendant has not met his burden to show ineffective assistance of counsel concerning the Link card evidence.

¶ 61 Third, defendant argues trial counsel was ineffective for acquiescing to the State's introduction in its rebuttal case of the Office of Emergency Management and Communications (OEMC) audiotape, which showed the time line of defendant's detention and arrest. Defendant complains that the OEMC audiotape undermined his alibi; the State never established the

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requisite foundation before the tape was admitted and never showed that the times stated on the tape were accurate; and defendant's counsel recognized that the State wished to introduce the tape for a hearsay purpose.

¶ 62 According to the record, counsel for defendant and codefendant informed the trial court that they had no objection to the State playing the audiotape of Jose Sr.'s 911 call during the State's rebuttal case. During the direct examination of Officer Johnson, the State sought to introduce the OEMC audiotape, which, in addition to recording communications made over the police radio, had a computerized voice that stated the time every 30 seconds, *i.e.*, a time stamp. Officer Johnson testified that he had listened to the OEMC audiotape, it was a true and accurate depiction of the communications on his radio at the relevant time, his voice was on the OEMC audiotape, and the times on the audiotape were consistent with the times that he recalled from the date of the offense. During the sidebar to address defendant's and codefendant's objections, the State explained that it would play the portions of the tape where Officer Johnson stated that he had two possible suspects in custody and where defendant and codefendant were transported away from the gas station.

¶ 63 Defendant's counsel argued that the time stamp was hearsay and asked why the State wanted to play the tape. ASA Rajk responded it was "to show the timing of what happened." Defendant's counsel withdrew her objection, but codefendant's counsel argued that the State was not playing the victim's "hew and cry" but, rather, something like "inter-cop conversation." The trial court reminded defense counsel that they previously had stated on the record that they would not object to the playing of the 911 audiotape. The trial court also stated that both sides had the

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audiotape since discovery and knew what was on the recording. The trial court concluded that, even if the defense objected, the court would admit the audiotape for the limited purpose for which it was offered, and it was “as much hearsay as the Link card, which has been stipulated to and can come in.”

¶ 64 Defendant has not met his burden under the prejudice prong of the *Strickland* test.

Although defendant’s counsel withdrew her objection to the audiotape, codefendant’s counsel maintained his objection, and the trial court overruled it. Accordingly, defendant cannot show a reasonable probability that the trial court would have sustained defendant’s counsel’s objection to the audiotape if she had not already withdrawn it. In addition, we do not assume that the State was unable to satisfy defendant’s concerns about the requisite foundation for the audiotape.

Defendant’s counsel reasonably could have decided to let the jury question the authenticity of the time stamps on the audiotape without giving the State the opportunity to call another witness to corroborate Officer Johnson’s testimony concerning the time of defendant’s detention and arrest.

¶ 65 C. Closing Arguments

¶ 66 Defendant contends he was denied his right to a fair trial based on the prosecutor’s erroneous and prejudicial comments during closing argument. Specifically, defendant alleges that the prosecutor (1) suggested that Jose Jr. was intimidated by defendant, his family and the defense attorneys in court; (2) insinuated that defendant was associated with a street gang; and (3) argued the burden of proof was unjustly placed on the State. Defendant argues the cumulative impact of the prosecution’s various acts of misconduct denied him a fair trial.

¶ 67 A prosecutor is allowed wide latitude during closing arguments. *People v. Nieves*, 193 Ill. 2d 513, 532-33 (2000). A prosecutor may comment on the evidence presented at trial, as well as any fair, reasonable inferences therefrom, even if such inferences reflect negatively on the defendant. *People v. Nicholas*, 218 Ill. 2d 104, 121 (2005). Remarks made during closing arguments must be examined in the context of those made by both the defense and the prosecution, and must always be based upon the evidence presented or reasonable inferences drawn therefrom. *People v. Coleman*, 201 Ill. App. 3d 803, 807 (1990). The character and scope of closing arguments are left largely to the discretion of the trial court, and we will not disturb its decision absent an abuse of discretion. *People v. Aleman*, 313 Ill. App. 3d 51, 66-67 (2000). We will reverse a conviction on the ground of improper argument only if the challenged comments constituted a material factor in the conviction, without which the jury might have reached a different verdict. *Id.*, at 67. However, where a defendant has forfeited review of many of the prosecutor's statements made during closing argument, the court reviews *de novo* the legal issue of whether the prosecutor's improper statements were so egregious that they warrant a new trial. *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007).

¶ 68 First, defendant argues that there was no evidence to justify the prosecutor's argument that Jose Jr. testified differently from his father and Serrano because Jose Jr. was scared or intimidated by the defense attorneys, defendant and codefendant, and their family members who were present in court.

¶ 69 According to the record, defense counsel argued that Jose Jr.'s identification of defendant was not credible because Jose Jr. initially testified that he did not see defendant's face in the

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basement, but later testified that he saw defendant's face when he was struggling with Jose Sr. In response, the prosecutor acknowledged the contradiction in Jose Jr.'s testimony but stated that he was a highschool student and had to come to court and testify before "all these people, not knowing if [they were] defendant's family." The trial court sustained defendant's objection and instructed the jury to disregard it. The prosecutor continued that Jose Jr. had to come into a public courtroom, "come face-to-face with the men who robbed him that day who had a gun, who threatened to kill him, and his father and [Serrano]." The prosecutor argued that Jose Jr.'s testimony meant that he did not see defendant's face when he was taken from the first floor into the basement until he had the slight opportunity to peek and see defendant's face when defendant was kicking Jose Sr. The prosecutor argued that, after cross-examination by two defense attorneys, Jose Jr. "had been seriously beat up" and was just responding affirmatively to whatever leading questions were asked during cross-examination. The prosecutor then stated that when Jose Jr. was at the showup, he identified the offenders' faces, was not intimidated, and there was no pressure on him when he was behind the tinted glass of the SUV.

¶ 70 Although the prosecutor did not state that defendant or his family had threatened or intimidated Jose Jr., the prosecutor was close to making that insinuation when the trial court properly sustained defendant's objection. See *People v. Bartall*, 98 Ill. 2d 294, 317 (1983) (a potential error is cured when a trial court sustains an objection and instructs the jury to disregard the comments and that closing arguments are not evidence). The prosecutor then modified her argument to clarify that the contradiction in Jose Jr.'s testimony was attributable to his age and the intimidating circumstances of confronting in court the offenders who had held him at

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gunpoint and threatened his life and his father's life. We find no error in the State's argument after the trial court sustained defendant's objection; it was a reasonable inference from the evidence. The record establishes that Jose Jr. was a teenager and was repeatedly asked to speak more loudly during his testimony. Questions often had to be repeated or rephrased when his responses revealed that he had not understood the question. Accordingly, the record supports the State's argument that Jose Jr. was intimidated by the court proceeding.

¶ 71 Second, defendant argues the prosecutor improperly speculated that the offenders were necessarily teenagers and thereby insinuated that defendant was associated with a street gang. Defendant has forfeited review of this issue because counsel did not timely object during the prosecution's closing argument to the comments about the offenders necessarily being teenagers. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988) (in order to preserve an issue for review, the defendant must both timely object at trial and include the issue in his posttrial motion). Such forfeiture notwithstanding, defendant's argument lacks merit.

¶ 72 According to the record, the defense had argued that defendant and codefendant would not have been hanging around a few blocks from the crime scene if they were the robbers. In response, the prosecutor argued that defendants were presumed innocent but not presumed intelligent, and one did not generally hear about older robbers working in groups unless a big bank or Las Vegas heist was involved. At that point, the trial court overruled codefendant's objection to speculation of robberies in other locations by other age groups. The prosecutor argued that young men and teenagers "work in groups" and "form partnerships" because they do not feel competent or confident to rob someone alone at gunpoint. The prosecutor argued that

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defendant and codefendant “together with their other two teenage thugs, *** could go out and rob someone.”

¶ 73 We conclude that the State’s argument was not improper. Contrary to defendant’s argument on appeal, the State never insinuated that defendant and codefendant were members of a street gang. Furthermore, the State’s argument properly responded to arguments raised by the defense and was based on fair inferences from the evidence. Officer Johnson testified that Jose Sr. told him that the offenders were young males. Moreover, Officer Johnson went to the gas station because he was familiar with the neighborhood and knew that “younger guys” would “hang out” at the gas station. In addition, the State’s reference to thugs was an accurate characterization of the offenders that held the victims at gunpoint, searched them and took their valuables, threatened to kill them, and punched and kicked Jose Sr.

¶ 74 Third, defendant asserts that the prosecutor trivialized and distorted the burden of proof by suggesting that it was unjustly placed on the State and by emphasizing that the defense did not have to prove anything. Defendant acknowledges that he forfeited review of this issue but asks this court to review it under the first prong of the plain error doctrine.

¶ 75 A court may consider a forfeited issue as plain error. The plain error doctrine allows errors not previously challenged to be considered on appeal if either: (1) the evidence is closely balanced and the jury’s guilty verdict may have resulted from the error; or (2) the error was so fundamental and of such magnitude that the defendant was denied a fair trial and the error must be remedied to preserve the integrity of the judicial process. *People v. Hudson*, 228 Ill. 2d 181, 191 (2008); *People v. Herron*, 215 Ill. 2d 167, 177 (2005). “In plain error review, the burden of

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persuasion rests with the defendant.” *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). The first step of plain error analysis is deciding whether any error has occurred. *Id.*; *People v. Durr*, 215 Ill. 2d 283, 299 (2005).

¶ 76 We conclude that no error occurred here. Our review of the record establishes that defendant’s characterization of the State’s argument is not accurate. The State did not trivialize or distort its burden of proof. According to the record, the prosecutor accurately described the State’s burden of proof, said the State “gladly accept[ed] it,” and argued that the jurors must concern themselves with the issue of reasonable doubt.

¶ 77 D. Constitutionality of the Automatic Transfer Provision from Juvenile Court

¶ 78 Defendant’s case was automatically transferred to adult criminal court pursuant to the automatic transfer statute (705 ILCS 405/5-130 (West 2010)), which provides, in pertinent part, that 15- and 16-year-old defendants charged with armed robbery with a firearm are to be prosecuted under the Criminal Code of 1961 (720 ILCS 5/1-1 *et seq.* (West 2010)) and not the Juvenile Court Act of 1987. Defendant argues that the automatic transfer statute violated the due process clauses of the state and federal constitutions (U.S. Const. amend. XIV; Ill. Const. 1970, art. I, § 2), the eighth amendment of the federal constitution (U.S. Const. amend. VIII), and the proportionate penalties clause of the state constitution (Ill. Const. 1970., art I, § 11) because the automatic transfer statute resulted in his transfer to adult court without a hearing and subjected him to more severe punishment.

¶ 79 Statutes are presumed constitutional, and we must construe statutes so as to uphold their constitutionality if there is any reasonable way to do so. *People v. Smith*, 383 Ill. App. 3d 1078,

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1094 (2008). The party challenging the validity of a statute had the burden of clearly establishing a constitutional violation. *Id.* We review the constitutionality of a statute *de novo.* *Id.*

¶ 80 Defendant acknowledges that our state supreme court has previously ruled that the automatic transfer provision was constitutional (*People v. J.S.*, 103 Ill. 2d 395, 405 (1984); *People v. M.A.*, 124 Ill. 2d 135, 147 (1988); *People v. R.L.*, 158 Ill. 2d 432 (1994)), but he argues this court should review the issue in light of three more recent Supreme Court cases concerning sentencing schemes applied to juveniles. Specifically, defendant cites *Miller v. Alabama*, 132 S. Ct. 2455 (2012) (mandatory life imprisonment without parole for offenders under 18 years of age at the time of their crime violated the eighth amendment's prohibition against cruel and unusual punishment, and the sentencing scheme prevented the sentencing court from considering the juvenile's lessened culpability and greater capacity for change), *Graham v. Florida*, 130 S. Ct. 2011 (2010) (the Court concluded that the eighth amendment forbids, in light of the goal of rehabilitation, the sentence of life without parole for a juvenile offender who did not commit homicide), and *Roper v. Simmons*, 543 U.S. 551 (2005) (the Court concluded that the eighth amendment forbids imposition of the death penalty on offenders who were under the age of 18 when they committed their crimes).

¶ 81 Defendant argues that his substantive and procedural due process rights were violated because automatically transferring all eligible 15- and 16-year-old defendants to adult court without a hearing to determine their potential for rehabilitation and individual level of culpability bears no rational relationship to a legitimate governmental purpose. This argument was made and rejected in *People v. Jackson*, 2012 IL App (1st) 100398 and *People v. Salas*, 2011 IL App

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(1st) 091880. *Jackson* noted that both *Roper* and *Graham* decided constitutional challenges made to sentencing statutes; no due process arguments were raised or addressed in either case; and the Illinois supreme court's decision in *J.S.*, which rejected a due process challenge to the automatic transfer provision, still controlled the issue at bar. *Jackson*, 2012 IL App (1st) 100398, ¶¶ 16, 17; see also *Salas*, 2011 IL App (1st) 091880, ¶¶ 76-80 (similarly rejecting due process challenges to the automatic transfer statute, finding that *Roper* and *Graham* were inapplicable and that *J.S.* remained binding). *Miller*, like *Roper* and *Graham*, was decided on a constitutional challenge made to a sentencing statute. Consequently, *Miller* does not affect the analysis in *Jackson*. We follow *Jackson* and *Salas* and reject defendant's argument that the automatic transfer provision violated his right to substantive and procedural due process.

¶ 82 Finally, defendant argues that the automatic transfer provision violates the proportionate penalties clause of the Illinois Constitution and the eighth amendment of the U.S. Constitution because it mandates adult sentencing for juveniles, who, under the rationale in *Roper*, *Graham* and *Miller*, should not be treated the same as adults. This argument was made and rejected in *Jackson* and *Salas* on the basis that the defendant was not challenging his *sentence* but, rather, the *procedure* that exposed him to the adult sentencing scheme. *Jackson* and *Salas* determined that the proportionate penalties clause of the Illinois Constitution and the eighth amendment of the U.S. Constitution apply to penalties and punishments, not to procedure, and therefore do not apply to a defendant's challenge to the automatic transfer provision. *Jackson*, 2012 IL App (1st) 100398, ¶¶ 19, 24; *Salas*, 2011 IL App (1st) 091880, ¶¶ 68, 70. We agree with the reasoning in *Jackson* and *Salas* and similarly find that the automatic transfer provision does not violate the

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proportionate penalties clause of the Illinois Constitution or the eighth amendment of the U.S. Constitution.

¶ 83 E. Constitutionality of the Firearm Sentencing Enhancement

¶ 84 Defendant argues that his 15-year firearm enhancement to the crime of armed robbery is void because it was found unconstitutional under the proportionate penalties clause of the Illinois Constitution by our supreme court in *People v. Hauschild*, 226 Ill. 2d 63, 87 (2007), and the Illinois legislature did not reenact it thereafter.

¶ 85 Defendant's argument lacks merit. In *People v. Blair*, 2013 IL 114122, ¶¶ 27-35, the court held that the enhancement was revived through an amendment to the armed violence statute.

¶ 86 F. Excessive Sentence

¶ 87 Defendant argues the trial court abused its discretion by sentencing him to three 25-year concurrent sentences for armed robbery because the court did not take into account his youth, lack of criminal background, and potential for rehabilitation.

¶ 88 The sentencing range for the armed robbery convictions was 6 to 30 years in prison. 720 ILCS 5/18-2(b) (West 2010). Because the jury found that the armed robbery was committed while defendant or one for whose conduct he was legally responsible was armed with a firearm, the trial court added 15 years to the sentence. 720 ILCS 5/18-2(a)(2) (West 2010). Accordingly, the trial court sentenced defendant to 10 years and then added the 15-year mandatory enhancement to his sentence. This means that the trial court gave defendant, without the firearm enhancement, only four years over the minimum possible sentence.

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¶ 89 A reviewing court will not disturb a trial court's sentence of a defendant absent an abuse of discretion. *Hauschild*, 226 Ill. 2d at 90. A trial court abuses its discretion when its ruling is arbitrary, fanciful, unreasonable or where no reasonable person would take the view adopted by the trial court. *People v. Sutherland*, 223 Ill. 2d 187, 272-273 (2006). When "a sentence falls within statutory guidelines, it is presumed to be proper and will be overturned only on an affirmative showing that it departs from the intent of the law or violated constitutional guidelines." *People v. Hamilton*, 361 Ill. App. 3d 836, 846 (2005).

¶ 90 When imposing a sentence, a court should consider the seriousness of the crime, the need to protect society, the need for deterrence and punishment, the failure of the defendant to show a penitent spirit, prior convictions, the defendant's general moral character, his mentality, his habits, his social environments, his abnormal or subnormal tendencies, his age, his natural inclination or aversion to commit crime, and the stimuli that motivated his conduct. *People v. Lamkey*, 240 Ill. App. 3d 435, 441 (1992); *People v. Morgan*, 29 Ill. App. 3d 1043, 1045 (1975). The trial court is granted great deference in sentencing because it is generally in a better position than the reviewing court to determine the appropriate sentence. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The trial court has the opportunity to weigh such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits and age. *Id.* A reviewing court will not substitute its judgment for that of the trial court merely because the reviewing court would have weighed those factors differently. *Id.*

¶ 91 The trial judge is not required to detail precisely for the record the exact process by which he determined the penalty, articulate his consideration of mitigating factors, or make an express

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finding that defendant lacked rehabilitative potential. *People v. Bocclair*, 225 Ill. App. 3d 331, 337 (1992). Additionally, when mitigating evidence is before the court, it is presumed that the judge considered the evidence, absent some indication, other than the sentence imposed, to the contrary. *People v. Canet*, 218 Ill. App. 3d 855, 864 (1991).

¶ 92 The record establishes that the trial court took defendant's youth into consideration, stating that he was not yet legally an adult. The trial court also noted that defendant had no prior convictions. Nevertheless, the trial court considered the seriousness of the crime where three people were victimized, a firearm was displayed and held to the victims' heads, and one of the offenders urged the gunman to kill the victims. In addition, Jose Sr. was punched, kicked and bleeding after he struggled with the offenders. Under these circumstances, it was reasonable for the trial court to determine that a lesser sentence was not appropriate. Consequently, we conclude that the trial court did not abuse its discretion in sentencing defendant to three concurrent 25-year prison terms for armed robbery with a firearm.

¶ 93

III. CONCLUSION

¶ 94 For the foregoing reasons, we affirm defendant's convictions of armed robbery and his sentences.

¶ 95 Affirmed.