2013 IL App (5th) 110415-U

NO. 5-11-0415

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Jackson County.
	)	
v.	)	No. 09-CF-37
	)	
JAMES GADDIS,	)	Honorable
	)	E. Dan Kimmel,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Justices Stewart and Wexstten concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's decision to give a modified version of the pattern instruction on compulsion tendered by the State was error, but the error was harmless in light of the overwhelming evidence of the defendant's guilt. The trial court did not abuse its discretion in sentencing the defendant to 30 years in prison.

¶ 2 The defendant, James Gaddis, was found guilty of robbery while armed with a handgun, and he was sentenced to a term of 30 years' imprisonment. On appeal, the defendant contends that the trial court abused its discretion in giving a modified version of the pattern instruction on the defense of compulsion and in sentencing him to 30 years in prison. We affirm.

¶ 3 Following a three-month investigation, the defendant, then a sworn police officer employed with the City of Carbondale, and a codefendant, Anthony Mitchell Fike, were charged with robbery while armed with a dangerous weapon in violation of section 18-2(a)(2) of the Criminal Code of 1961 (Code) (720 ILCS 5/18-2(a)(2) (West 2008)). A

conviction under section 18-2(a)(2) carries a sentence of 6 to 30 years in prison and a mandatory 15-year sentencing enhancement. 720 ILCS 5/18-2(b) (West 2008). The defendant entered a plea of not guilty. Fike cooperated with authorities and eventually entered into an agreement with the State. According to the memorandum of understanding, in exchange for Fike's cooperation and truthful testimony at the defendant's trial, the State agreed to amend his charge to armed robbery under section 18-2(a)(1) of the Code and to ask the court to sentence him to a prison term of seven years. The amendment was significant because section 18-2(a)(1) does not carry a sentencing enhancement. After testifying at the defendant's trial, Fike pled guilty to the amended charge and he was sentenced to seven years in prison. The defendant proceeded to trial with a compulsion defense and he maintained that Fike had coerced his participation in the robbery. The jury rejected the defense and found that the defendant was guilty of robbery while armed with a dangerous weapon. The evidence adduced at trial follows.

¶ 4 An armed robbery occurred at the west branch of First Southern Bank at 9:45 a.m. on October 9, 2008. At that time, there were three employees in the bank, associates Lynn Vincent and Adam Bunting, and assistant vice president Ethan Jefferson. Vincent and Bunting were working at the teller windows when they observed a motorcycle, with two people aboard, pull up near the front entrance to the bank. The passenger, later identified as the defendant, hopped off the bike and entered the lobby through the front entrance. He was wearing a black helmet with a flip-down shield and a riding suit, and he was carrying a backpack. The defendant approached Vincent's window. He asked whether he needed to remove his helmet. Vincent told him that he did. The defendant fiddled with the chin strap and then suddenly pulled a handgun from his backpack. Vincent thought the defendant was going to kill her and her coworkers. The defendant said that no one would get hurt if they did what they were told. The defendant instructed Vincent and Bunting to back up, cross

their arms in front of their chests, and place their hands on their shoulders. Ethan Jefferson was working in a nearby office when he saw the defendant pull out a gun. He managed to activate a silent alarm before the defendant ordered him to come into the teller area and face the wall. Jefferson noted that the defendant was holding a semiautomatic handgun and that the slide appeared to be in a firing position.

¶ 5 At that point, the driver, later identified as Anthony Fike, came running through the front entrance. Fike was outfitted with a grey or silver motorcycle helmet and a riding suit. He hopped over the counter at the unoccupied teller window and began to take money from the tellers' drawers. The defendant trained his gun on the three employees as Fike moved to each teller window, opened the drawers, and removed money. The defendant told the employees several times that no one was going to get hurt. Bunting described the defendant as polite, but all three employees testified that they felt threatened and feared for their safety. After Fike cleaned out the last drawer, he hopped over the center teller window and ran outside. No one saw Fike display a gun or other weapon during the robbery. Once Fike exited the building, the defendant made his escape. The defendant backed out the door, still holding the gun, and got on the motorcycle behind Fike.

¶ 6 Sergeant Robert Rendleman, an Illinois Department of Conservation officer, was off duty and driving past the bank when he noticed that a motorcycle was backed-up to the main entrance to the bank. Rendleman also noticed that there was a person sitting on the bike. The person was wearing a tan jacket, green pants, red shoes, and a silver helmet. Rendleman's first thought was that there was a robbery in progress. He had already passed the bank's driveway, so he shifted into reverse and backed his truck into a position to block the exit. He then got out of the truck and stood near the back bumper. Rendleman then saw a second person run out of the bank and jump on the motorcycle. This person was wearing a black helmet and he was carrying a backpack. Rendleman drew his gun as the motorcycle

approached the rear of his truck. The driver and passenger appeared to notice Rendleman's gun. When the driver paused for a second, the passenger pounded his fists on the driver's shoulder and shouted, "Go, go, go." The driver took off down the sidewalk and eventually entered the roadway from another driveway.

¶ 7 Rendleman got in his truck and pursued the motorcycle. The driver headed west on Old Route 13 and then turned south onto Tower Road. Rendleman estimated his speed at 70 to 80 miles per hour and the bike's speed at over 100 miles per hour. The driver ran one stop sign, but then stopped for the stop sign at Tower Road and Chautauqua Road before turning onto Chautauqua Road. Rendleman lost the bike on Chautauqua Road. Rendleman radioed a description of the motorcycle to the Jackson County sheriff's office. He described it as a Suzuki racing bike, black and dark green in color. He noted that it appeared that the bike had been modified.

¶ 8 Chap Chapman, an employee of the City of Carbondale, was working near the intersection of Tower and Sunset, on the morning of October 9, 2008, when the "revving" of a motorcycle caught his attention. He observed a motorcycle, with two people aboard, turning onto Tower Road from Murphysboro Road. The driver took the turn at 30 to 35 miles per hour and then kicked it up to 60 to 70 miles per hour. Chapman said that the motorcycle was a Suzuki Hayabusa. He noted that the Hayabusa was the fastest performance bike available when it was first sold. It was commonly called a "crotch rocket."

¶ 9 At approximately 9:39 a.m. on October 9, 2008, the Jackson County sheriff's office received a 911 call. The caller reported that she had been stabbed three times at Malibu Trailer Park. The call was dispatched to the Carbondale police department because the Malibu Trailer Park is within the city limits of Carbondale. Several patrol officers and detectives from the Carbondale police department responded to Malibu Trailer Park, but they could not locate a victim. The officers concluded that either the call was false or the

caller was confused and the stabbing occurred at a different trailer park.

¶ 10 Meanwhile, the dispatcher plotted the 911 call and determined that it had been placed at a location near Thunderstorm Road on the north side of town. Ray Bohm, a deputy with the Jackson County sheriff's office, was driving to a trailer park near Thunderstorm Road to investigate the call when he heard a report of a Suzuki motorcycle fleeing from First Southern Bank. As Bohm approached the intersection of Country Club and Pleasant Hill, he saw a motorcycle which fit the description. Bohm stopped the driver. The driver identified himself as Anthony Fike and produced his driver's license. Bohm searched Fike, but he did not find a large amount of cash or any weapons. Bohm noted that Fike was cooperative during the stop. He released Fike after concluding that he had "nothing to hold him on." A short time later, Jackson County Deputy Kenneth Akins stopped Fike. Akins verified Fike's identity. Akins released Fike after learning that Fike had already been stopped and searched. Akins noted that Fike had done nothing during the stop to raise any suspicion.

¶ 11 Lieutenant Paul Echols, the investigations commander for the Carbondale police department, heard the radio call reporting a motorcycle fleeing from the bank. Echols responded to the bank. He was briefed by two Carbondale officers who had arrived ahead of him. When Echols learned that an armed robbery had occurred, he summoned a crime scene investigator to process the scene for physical evidence and directed officers to interview the witnesses. Video images and a video recording of the robbery from the bank's surveillance system were secured. The video recording showed a container falling onto the lobby floor as a man pulled a gun from a backpack. The crime scene investigator found a Goldfish cracker container, shaped like a half-pint milk carton, on the floor of the lobby. She seized it and submitted it to the crime lab for processing and DNA testing. No fingerprints were found on the container. DNA material was discovered near the pour spout.

The DNA matched the profile of a man named Terrell Travis. Investigators collected data on Travis and performed surveillance of his home, and detectives interviewed Travis at length. After an extensive investigation, Echols and his detectives concluded that Travis was not involved in the robbery.

¶ 12 Anthony Fike was a focus of the investigation even though he had not been detained. His cell phone records were obtained and examined. The records revealed several communications between Fike's cell and another cell number, including 21 calls on the day of the robbery. Investigators discovered that the other cell number was registered to the defendant. The defendant's cell phone records were obtained and examined. According to data in those records, the defendant's cell phone was in the vicinity of Thunderstorm Road when the false 911 call was made. The defendant, a five-year veteran of the Carbondale police department, became a person of interest.

¶ 13 During the course of the investigation, the defendant continued to work as a Carbondale police officer. He engaged in brief conversations with his fellow patrol officers and detectives, and he sometimes asked about the progress of the robbery investigation. The defendant never told his colleagues that Fike had threatened him or his family. On December 17, 2008, when Lieutenant Echols was arriving for duty, he ran into the defendant at the police department. During a brief conversation, Echols asked the defendant a few questions about Fike. Echols recalled that the defendant expressed some concern that Fike was a suspect because he sometimes watched the defendant's home. Echols also recalled that the defendant commented that he did not think Fike was capable of robbery. The defendant mentioned he had driven to Atlanta to pick up his wife and son on the day of the robbery. He did not mention that Fike had coerced his participation in the robbery or that Fike had threatened him and his wife and child.

¶ 14 When it became clear that a Carbondale police officer was a person of interest, the

Carbondale police department asked the Jackson County sheriff's office to assist with the investigation. Michael Ryan, a detective in the sheriff's office, was assigned to the investigation. Detective Ryan interviewed Fike on January 14, 2009. During the interview, Fike confessed to the robbery and implicated the defendant. He told Ryan that the defendant had approached him about robbing a bank and that the defendant planned the robbery in detail. Fike was asked whether he would be willing to engage the defendant in a police-recorded conversation. Fike agreed to participate. Once the interview was completed, Fike phoned the defendant and spoke to him for approximately two minutes. The conversation was monitored and recorded by Ryan. The recording was played for the jury during the trial.

¶ 15 On the evening of January 14, 2009, Detective Ryan presented his probable-cause affidavit to the court and secured a warrant for the defendant's arrest and a warrant to search his residence. Later that evening, Ryan called the defendant and asked him to come to the Jackson County sheriff's office to talk about the investigation. The defendant agreed and arrived shortly thereafter. Ryan escorted the defendant to an interview room in a secured part of the building. The defendant was arrested and handcuffed. Ryan informed the defendant that he had been charged with armed robbery. Ryan advised him of his *Miranda* rights. The defendant agreed to an interview.

¶ 16 During the interview, Ryan asked the defendant about his actions on the day of the robbery. The defendant denied any knowledge or involvement in the robbery. The defendant said that on the morning of the robbery, he left his shift early because he was sick. The defendant said that he slept for a few hours and then picked up his paycheck. He then drove to Atlanta to pick up his wife and son who had been visiting with relatives. The defendant did not mention that Fike had threatened him and his family. Lieutenant Echols, who was also present for the interview, advised the defendant that he had reviewed a surveillance video from the bank and that he thought one of the suspects in the video

resembled the defendant. The defendant became agitated and yelled at Echols. At that point, Ryan terminated the interview because the defendant was angry and the interview was unproductive. The defendant was booked and taken to a cell.

¶ 17 Ryan went home. About an hour later, Ryan received a call from a deputy who advised that the defendant wanted to talk. Ryan returned to the sheriff's office. He and Sheriff Burns met with the defendant. Ryan advised the defendant of his *Miranda* rights. At that point, the defendant apologized to Ryan for not being truthful. The defendant said that he could explain what was going on because he learned that his wife and child were safe with his mother. The defendant told Ryan that Fike had coerced the defendant's participation in the robbery, and that Fike and an associate had threatened to harm the defendant and his wife and son if he refused to participate. After giving his statement, the defendant consented to a recorded interview. The recorded interview was conducted that same night. On January 15, 2009, the State charged the defendant and Anthony Fike with robbery while armed with a dangerous weapon under section 18-2(a)(2) of the Code.

¶ 18 Fike negotiated a plea agreement with the State. In accordance with the agreement, Fike testified in the State's case against the defendant. Fike informed the jury that he had negotiated a plea agreement with the State. He outlined the terms of the negotiated plea, and he noted that the deal was contingent upon his cooperation and truthful testimony.

¶ 19 Fike then testified about the events leading up to the robbery. He noted that the defendant was his next-door neighbor. During the summer of 2008, he and the defendant had a conversation about money and projects, such as building sheds, that might bring in extra money. Near the end of the conversation, the defendant said that they should rob a bank. Fike thought the defendant was kidding at that time, so he laughed it off. Fike became concerned because the defendant continued to talk about it. He knew the defendant was a police officer, and he wondered whether the defendant was trying to set him up. Fike

testified that he ran into the defendant outside the Murphysboro City Hall in September 2008. The defendant told him that they needed to get together and talk about a bank. Fike and the defendant met at the defendant's house a few days later. Fike stated that the defendant seemed to have given the idea of robbing a bank serious thought. The defendant talked about the police department's shift staffing and shift changes. He described the alarm system used by banks. He noted that there is a delay in police response as the police department verifies that it is a legitimate alarm. The defendant also mentioned that he had a radio and could monitor radio calls. Fike met with the defendant a few days later. The defendant was aware that Fike had a silver and blue Suzuki Hayabusa motorcycle. He knew it was a high-performance bike that could reach a speed of 180 miles per hour. The defendant said they could use the motorcycle to go to and from the bank on back roads. He showed Fike maps of possible routes. The defendant said they could cover the bike with black trash bags to disguise its colors. The defendant also mentioned that he had a plan to divert the police and delay their response time.

¶ 20 Fike acknowledged that he and the defendant purchased clothing and helmets as disguises in early October 2008. Fike stated that he bought a backpack, a silver helmet, and a balaclava. A balaclava is a type of ski mask used by motorcycle riders and cyclists that covers the head, ears, neck, and shoulders. The defendant bought a backpack, a black helmet, a balaclava, black plastic trash bags, and black duct tape. Fike took the defendant for a test ride on his bike because the defendant was not familiar with riding on motorcycles.

¶ 21 Fike testified that the robbery was originally scheduled for Monday, October 6, 2008, but the defendant called him that morning to postpone it. The defendant stated that there was too much traffic at the scheduled meeting place. He feared that too many people may have seen him waiting there. The defendant found a new meeting place, a vacant house on a nearby back road. He told Fike that they would rob the bank on Thursday, October 9,

2008. Fike met up with the defendant on Thursday morning, and they rode to the vacant house. Minutes before the robbery, the defendant used a disposable phone to call 911. He disguised his voice and claimed to be a woman who had been stabbed at a trailer park on the far side of town. The defendant believed that most of the police officers who were on duty would respond to that call, and that the diversion would give them time to commit the robbery and escape.

¶ 22 Fike acknowledged that he drove the motorcycle. The defendant was seated behind him. When they arrived at the bank, the defendant went in first. He was supposed to get everyone's attention. Fike then entered the bank and hopped over a counter. He removed money from the tellers' drawers and placed the money into the defendant's backpack. Fike hopped back over the counter and left the bank. The defendant followed. Once outside, Fike handed the backpack containing the money to the defendant. Fike testified that he did not have a gun or other weapon with him during the robbery.

¶ 23 As Fike drove away from the entrance to the bank, he noticed that a pickup truck was blocking the bank's driveway. Fike slowed in order to determine if he could squeeze between the pickup and the sidewalk. As he approached the rear of the pickup, he saw a man standing there, pointing a gun in his direction. Fike paused for a moment. At that point, the defendant pounded his fists on Fike's shoulders and shouted, "Go, go, go." Fike took off down the sidewalk and entered the road from another driveway. Fike testified that he was going about 100 miles per hour. Fike drove back to the vacant house. The defendant had selected this place because it was in a low traffic area. The defendant and Fike removed their outer layers of clothing. They put the clothing and helmets into a duffel bag. Just then, Fike heard the blaring of police sirens. Fike testified that he "freaked out." Fike said that the defendant also "freaked out" because he did not think the police would be alerted to the robbery until Fike was on his way home. Fike was supposed to get his car and immediately

return to the vacant house to retrieve the defendant. Fike testified that he was stopped by police three times on his way home. Because of the police presence, Fike did not return to the vacant house immediately. He went back to get the defendant a few hours later. Fike went to the defendant's house that evening. The defendant was in a back bedroom, sorting and counting the money from the robbery. Fike testified that he and the defendant each received $10,700. Fike noted that he did not spend all of his share. He told the police where he had stored his money. The police searched his residence and recovered approximately $3,500. The bank conducted an audit and determined that $22,835 was taken during the robbery.

¶ 24 The defendant took the witness stand in his own defense. He told a very different story about the course of events that led to the robbery.

¶ 25 The defendant testified that sometime during the summer of 2008, he was on patrol when he saw his neighbor, Anthony Fike, involved in what appeared to be a drug deal. The defendant said that he was shocked by this. He drove away without making an arrest. After the incident, Fike began to make veiled threats. A few weeks after the incident, the defendant returned from an outing and found that the sliding glass door at the rear of his house was open. Fike appeared at the defendant's home a few days later and implied that he knew about the glass door. Fike noted that it was funny how things like that can occur. On another occasion, the defendant was asleep on his couch when someone rang his doorbell. When the defendant answered the door, a man asked for Mitch and the defendant directed him next door. The defendant thought that this man was the one who was involved in the drug deal with Fike. Fike then brought the defendant a VCR tape. The defendant stated that he watched the tape. He said that it showed an individual with a shotgun standing at the defendant's sliding glass door.

¶ 26 The defendant testified that Fike began to plan a robbery. He asked the defendant

about robbing convenience stores. The defendant advised Fike that it would not be worth the trouble because convenience stores did not keep large amounts of cash. Fike then talked about robbing his bank. The defendant discouraged him from doing that. At some point, Fike stated that his associate from the drug deal could not help with the robbery. Fike told the defendant that he would have to participate. Fike said, "You know the consequences." At that point, the defendant agreed to cooperate. The defendant stated that he took his wife and child to Georgia because he was concerned for their safety. He considered quitting his job and moving to Georgia.

¶ 27 On the morning of the robbery, the defendant drove to a Walmart store. He met Fike in the parking lot. Fike drove the defendant to wooded area near Thunderstorm Road and left him there. Fike returned on a motorcycle a short time later. Fike had two backpacks and a motorcycle helmet for the defendant. They rode to the bank on Fike's motorcycle. The defendant went into the bank first. Fike came in a few minutes later. After the robbery, they rode back to a meeting place where he and the defendant changed clothes and stripped the plastic sheeting from the motorcycle. The defendant testified that Fike left to retrieve a car. While the defendant was awaiting Fike's return, he saw two police officers nearby. The defendant stated that he made no attempt to contact those officers because he feared that Fike could still harm his wife and son. The defendant had a Carbondale-issued police radio on him on the day of the robbery. He did not attempt to use it to notify fellow officers of his situation.

¶ 28 Fike came back to get the defendant a few hours later. He drove the defendant back to the parking lot at Walmart. The defendant drove home alone. Fike came over to the defendant's house and they counted the money. Fike handed some money to the defendant and instructed him to "launder it." After Fike left, the defendant took a shower. He then drove to a casino where he purchased gambling chips with some of the stolen money. He

planned to get clean money with his winnings. The defendant, however, lost money while gambling. Later that day, the defendant drove to Georgia to pick up his wife and son.

¶ 29 During cross-examination, the defendant admitted that he made no attempt to inform anyone at the police department of Fike's proposals prior to the robbery. He admitted that he made no attempt to arrest Fike at any point before or after the robbery. He acknowledged that he made the 911 call and reported the stabbing at a trailer park. He stated that he dropped the Goldfish container on the floor during the robbery in an attempt to divert the investigation and lead it away from him. The defendant acknowledged that he displayed his police-issued Glock during the robbery, but he stated that he had unloaded it before the robbery because he did not want anyone to get hurt. Throughout cross-examination, the defendant testified that he could not alert authorities about the threats or the robbery because he feared that Fike and his colleague would find his wife and son and harm them. He claimed that he could not have withdrawn from the plan, despite a number of opportunities, because of Fike's threats to harm his family.

¶ 30 The defendant's wife, Bianca Gaddis, testified in the defendant's case. Bianca stated that her husband started acting strange in September 2008. He seemed preoccupied. He called her several times a day. He repeatedly asked her if she was safe. Bianca stated that the defendant drove her and their son to Georgia to visit her parents on September 26, 2008, and that he returned to pick them up on October 9, 2008. The defendant had never told her that Fike had made threats or that Fike had forced him to rob a bank.

¶ 31 The defendant's mother, Cathy Jo Gaddis, also testified in the defendant's case. Cathy testified that on January 14, 2009, at approximately 11:20 p.m., she received a call from her son. Following that call, she immediately retrieved his wife and son and brought them to her home. When the defendant called again, Cathy assured him that his wife and son were with her. She conceded that the defendant had never mentioned any threats prior to his arrest.

¶ 32 In the first point on appeal, the defendant contends that the trial court abused its discretion in giving a modified version of the pattern instruction on the defense of compulsion.

¶ 33 In this case, the State tendered a proposed instruction that modified the pattern instruction on compulsion. The pattern instruction on compulsion, Illinois Pattern Jury Instructions, Criminal, No. 24-25.21 (4th ed. 2000) (hereinafter IPI Criminal 4th No. 24-25.21), states as follows:

> "It is a defense to the charge made against the defendant that he acted under the compulsion of threat or menace of the imminent infliction of death or great bodily harm, if he reasonably believed death or great bodily harm would be inflicted upon him if he did not perform the conduct with which he is charged."

The State modified the instruction by adding the following provision: "The defense of compulsion is not available to one who passes up an opportunity to withdraw from the criminal enterprise." The trial court gave the modified instruction over the defendant's objection.

¶ 34 The defendant contends that IPI Criminal 4th No. 24-25.21 adequately defines compulsion and that the State's modified version of the instruction thwarts the objective that all jury instructions be simple, brief, impartial, and free from argument. In response, the State claims that the modified instruction was proper in that the supplemental provision clarified the meaning of the term "imminent" and provided the jury with an accurate statement of the case law regarding the availability of the defense of compulsion as it applied to the evidence. The defendant acknowledges that the supplemental provision contains an accurate statement of the case law regarding whether an instruction on compulsion is warranted by the evidence, but contends that the question is one of law for the court's determination. The defendant argues that the supplemental provision at issue neither defined

nor clarified any term in IPI Criminal 4th No. 24-25.21. The defendant further argues that the modified instruction placed an additional burden on the defense and that it virtually eliminated the possibility of an acquittal based on compulsion.

¶ 35 Compulsion is an affirmative defense which requires that the defendant have a reasonable belief that there is an impending threat of death or great bodily harm and that there is a demand that the defendant perform a specific criminal act for which he eventually is charged. 720 ILCS 5/7-11 (West 2012); *People v. Scherzer*, 179 Ill. App. 3d 624, 645, 534 N.E.2d 1043, 1058 (1989). The threat of harm must be imminent, and a threat of future injury is not sufficient to raise the defense of compulsion. *Scherzer*, 179 Ill. App. 3d at 644, 534 N.E.2d at 1057. The defense of compulsion is not available to one who passes up an opportunity to withdraw from the criminal enterprise. *Scherzer*, 179 Ill. App. 3d at 645-46, 534 N.E.2d at 1058. The trial court may properly refuse to instruct the jury on compulsion when there is clear evidence that the defendant had an ample opportunity to withdraw from the activity. *Scherzer*, 179 Ill. App. 3d at 645-46, 534 N.E.2d at 1058.

¶ 36 The purpose of jury instructions is to provide jurors with the correct principles of law applicable to the evidence before them. *People v. Carini*, 151 Ill. App. 3d 264, 282, 502 N.E.2d 1206, 1217 (1986). Supreme Court Rule 451(a) (eff. July 1, 2006) directs the trial court to instruct the jury pursuant to the pattern criminal instructions unless the trial court determines that a pattern instruction does not accurately state the law. While the IPI instructions are preferred, it is within the discretion of the trial court to give a modified instruction provided that the instruction is a simple, brief, impartial, and nonargumentative statement of the law. Ill. S. Ct. R. 451(a) (eff. July 1, 2006); *People v. Goodman*, 347 Ill. App. 3d 278, 290, 806 N.E.2d 1124, 1134 (2004).

¶ 37 In this case, we find that it was error to give the State's modified version of the pattern instruction on compulsion. As noted above, the modified instruction contained the following

supplemental provision: "The defense of compulsion is not available to one who passes up an opportunity to withdraw from the criminal enterprise." This provision contains an accurate statement of the case law regarding the question of whether an instruction on compulsion is warranted by the evidence. The question of whether the compulsion defense is available to a defendant is a legal one for the court's determination. In this case, the trial court determined that the compulsion defense was available and that there was sufficient evidence to support an instruction on compulsion. The factual question that remained for the jury was whether there was evidence proving that the defendant had passed up an opportunity to withdraw from the criminal activity. The State's modified instruction should not have been given, as the supplemental provision concerned a question of law for the court's determination, rather than a factual matter for the jury's consideration. Whether a free-standing instruction on the subject of the defendant's opportunity to withdraw from the criminal enterprise would be proper in a given case is not before us and is a question for another day.

¶ 38 The State also claims that the modified instruction was proper because the supplemental provision clarified the term "imminent," and it cites two appellate court decisions, *People v. Goodman*, 347 Ill. App. 3d 278, 806 N.E.2d 1124 (2004), and *Carini*, in support of the modified instruction. In *Goodman* and *Carini*, the appellate court concluded that there was no abuse of discretion in giving a modified version of IPI Criminal 4th 24-25.21, which included the following provision, "You are instructed that a threat of future injury is not sufficient to excuse criminal conduct," because the modification clarified the meaning of the term "imminent" and because the instruction was warranted in light of the evidence. See *Carini*, 151 Ill. App. 3d at 282, 502 N.E.2d at 1217; *Goodman*, 347 Ill. App. 3d at 290, 806 N.E.2d at 1134. The supplemental provision at issue here is not akin to those discussed in *Goodman* and *Carini*, and the State's reliance on those cases is misplaced.

¶ 39 A trial court is required to instruct the jury pursuant to the pattern criminal instructions unless it determines that a pattern instruction does not accurately state the law. Ill. S. Ct. R. 451(a) (eff. July 1, 2006). IPI Criminal 4th 24-25.21 accurately describes the defense of compulsion, and the trial court did not find otherwise. The supplemental provision at issue concerns a question of law for the court's determination. It does not define or otherwise clarify any term in IPI Criminal 4th 24-25.21. We conclude that it was error to give the State's modified instruction on compulsion. That said, we find that the error was harmless. The instructions, when considered together, provided the jury with the correct principles of law applicable to the evidence. Moreover, the evidence of the defendant's guilt is overwhelming. *People v. Austin*, 133 Ill. 2d 118, 124, 549 N.E.2d 331, 333 (1989); *People v. Jones*, 81 Ill. 2d 1, 9, 405 N.E.2d 343, 346 (1979).

¶ 40 In his next point, the defendant contends that the trial court abused its discretion in sentencing him to 30 years in prison. The defendant argues that there is an unreasonable disparity between his 30-year sentence and the 7-year sentence imposed on his codefendant. The defendant points out that he had no prior convictions and that he protected the citizens during his five years as a police officer, and that his codefendant had previous felony convictions. The defendant concludes that he was punished because he invoked his constitutional right to a jury trial. The State counters that the sentence is within the range of punishment for a Class X felony and that 30 years is an appropriate sentence given the evidence at trial. The State argues, however, that the sentence must be modified because the trial court failed to add the 15-year sentencing enhancement as required under section 18-2(b) of the Code.

¶ 41 Initially, we address the State's contention the trial court failed to add the statutory 15-year enhancement when it sentenced the defendant. The record shows that the 15-year sentencing enhancement was discussed during the sentencing hearing. The State pointed out

that while a conviction for a Class X felony carries a sentencing range of 6 to 30 years' imprisonment, a conviction under section 18-2(a)(2) imposes a 15-year sentence enhancement. The State noted that the defendant was subject to the enhanced range of 21 to 45 years' imprisonment, and it asked the court to sentence the defendant to a term of 40 years. The defendant claimed that the 15-year enhancement provision in section 18-2(b) was declared unconstitutional as a violation of the proportionate penalties clause in *People v. Hauschild*, 226 Ill. 2d 63, 871 N.E.2d 1 (2007). The defendant argued that the applicable range of punishment was 6 to 30 years, and he asked for the 6-year minimum. In response, the State advised the court that the legislature cured the proportionate penalty violation and revived the 15-year sentence enhancement for armed robbery with a firearm when it amended the armed violence statute. The State noted that the amendment was effective almost a year before the defendant committed the armed robbery and that the 15-year enhancement applied in the defendant's case.

¶ 42 In this case, the State accurately apprised the trial court of the state of the law on the 15-year sentencing enhancement for armed robbery with a firearm during the sentencing hearing. The legislative amendment to the armed violence statute cured the proportionate penalty violation and revived the 15-year sentence enhancement for armed robbery with a firearm. See Pub. Act 95-688, § 4 (eff. Oct. 23, 2007); 95th Gen. Assem., Senate Proceedings, July 26, 2007, at 8-9. In this case, the defendant committed the armed robbery on October 9, 2008, almost one year after the effective date of Public Act 95-688, and he was subject to the 15-year sentencing enhancement for that crime. The State asked the court to sentence the defendant to an enhanced 40-year term. Before pronouncing sentence, the trial court noted that the State had asked for "not quite the maximum." The court proceeded to sentence the defendant to 30 years in the Illinois Department of Corrections. The trial court is presumed to know the law and to act accordingly. There is nothing in the record which

establishes or even suggests that the trial court ignored the law on sentencing enhancement. Based on the record, we find that the trial court included the 15-year enhancement when it sentenced the defendant to a prison term of 30 years.

¶ 43 We now consider the defendant's claim that there is an unreasonable disparity between his 30-year sentence and the 7-year sentence imposed on his codefendant. An arbitrary and unreasonable disparity between the sentences of similarly situated codefendants is impermissible. *People v. Caballero*, 179 Ill. 2d 205, 216, 688 N.E.2d 658, 663 (1997). That said, the mere disparity in sentences, by itself, does not establish a violation of fundamental fairness, and a sentence will not be disturbed where the disparity is based on differences in the nature and extent of codefendants' participation in the offense. *Caballero*, 179 Ill. 2d at 216, 688 N.E.2d at 663. In this case, there is evidence to establish that the defendant, a veteran police officer, was more culpable than his codefendant in terms of planning, preparation, and participation in the robbery. In addition, the codefendant acknowledged his guilt, cooperated with law enforcement during the investigation, and testified during the defendant's trial. Further, the record shows that in accordance with the plea agreement, the codefendant pled guilty to an amended charge which did not carry a sentence enhancement. Dispositional concessions are deemed proper when they serve the public interest in the effective administration of justice. *Caballero*, 179 Ill. 2d at 217-18, 688 N.E.2d at 664. A sentence imposed on a codefendant pursuant to a plea agreement does not provide a valid basis of comparison to a sentence entered after a trial. *Caballero*, 179 Ill. 2d at 217-18, 688 N.E.2d at 664. The record does not support the defendant's claim that the trial court imposed a 30-year sentence to punish him for invoking his constitutional right to a trial. The defendant has not established that the disparity in sentencing was unreasonable and unwarranted.

¶ 44 Accordingly, the judgment of the circuit court is affirmed.

¶ 45 Affirmed