2018 IL App (1st) 151636-U

No. 1-15-1636

Order filed March 9, 2018

Sixth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12 CR 23069
	)	
JAMES JENKINS,	)	Honorable
	)	Matthew E. Coghlan,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions and sentences for robbery, kidnapping, and vehicular hijacking are affirmed over his contentions that: (1) the evidence was insufficient to prove his guilt beyond a reasonable doubt because an eyewitness's identification was unreliable; (2) the trial court improperly imposed extended term sentences for his kidnapping and robbery convictions; and (3) his 12-year sentence for vehicular hijacking is excessive.

¶ 2 Following a bench trial, defendant was found guilty of robbery (720 ILCS 5/18-1(a) (West 2012)), kidnapping (720 ILCS 5/10-1(a)(1) (West 2012)), and vehicular hijacking (720

ILCS 5/18-3(a) (West 2012)). He was sentenced to extended terms of 10 years' imprisonment for both robbery and kidnapping, and a 12-year term for vehicular hijacking, with all sentences to be served concurrently. On appeal, defendant contends that: (1) an eyewitness's identification testimony was unreliable and thus insufficient to prove his guilt beyond a reasonable doubt; (2) the trial court incorrectly imposed extended term sentences for his kidnapping and robbery convictions; and (3) his sentence of 12 years' imprisonment for vehicular hijacking is excessive. We affirm.

¶ 3 Defendant was arrested on November 28, 2012. Defendant and Judith Mleczko were subsequently charged by indictment with committing armed robbery, aggravated vehicular hijacking, aggravated unlawful restraint, and three counts of aggravated kidnapping against Edward Dunst. The trial court granted defendant's motion to sever his trial from Mleczko's trial.

¶ 4 At trial, Dunst testified that, on the evening of November 24, 2012, he and a friend went to a bar. Dunst began drinking with his friend at 10:00 p.m. and could not recall if he had more than five drinks or how much time he spent at the bar. Dunst testified that the alcohol he consumed did not impair his ability to observe his surroundings. In the early morning of November 25, 2012, Dunst dropped off his friend within the vicinity of the 4700 block of South Cicero Avenue.

¶ 5 After dropping off his friend, Dunst went to the local Subway restaurant, where he was "looking for a girl." A woman named Judy, whom Dunst had seen in the area before, approached him and told him she was homeless, tired, and needed a place to sleep. Dunst agreed to get Judy a motel room, and she agreed to let him spend the night with her. Dunst testified that it was his intention to have sex with Judy.

¶ 6 About 3:00 a.m., Dunst rented room 212 at the Sportsman Inn, two blocks from the Subway. Five minutes after arriving at their motel room, Dunst gave Judy $20 to get a soda. Judy was gone for five to ten minutes, and when she returned, she knocked on the room door. Dunst answered the door, and saw a black man, whom Dunst identified in-court as defendant, standing to the left of Judy. As Judy entered the room, which was illuminated by lights, defendant pushed open the door, pulled out a black handgun, and pointed it at Dunst. At one point defendant placed the handgun in Dunst's eye. Dunst, who has training and experience with firearms, noticed that the handgun was a semiautomatic. Dunst recalled defendant telling him "to put my hands up, be cool, or I will be dead." While pointing the gun at Dunst's head, defendant rifled through Dunst's pockets—taking his wallet, car keys, cell phone, and $60 cash. Dunst testified that he stood half-a-foot from defendant while he was in the motel room and saw defendant's face. He described defendant as 5'9" tall. Dunst also stated that he did not know what defendant's hair looked like because he was "concentrating on the gun that was pointed at [him]." Dunst was in the motel room with defendant for a total of "maybe ten minutes."

¶ 7 Dunst testified that, after defendant took his money, he announced "this is all the money that you have, we're going to an ATM." Defendant asked Dunst where his vehicle, a grey 2006 Dodge Stratus, was parked. Dunst's vehicle was parked directly below the room. Defendant had trouble locating Dunst's vehicle, but eventually found it after Dunst told him to make the vehicle "beep" with a remote on his key chain. Before leaving the motel room, and while pointing the gun at Dunst, defendant told Dunst that he would kill him if he tried to run. When they left the motel room, defendant concealed the gun in his front right jacket pocket and pointed it at Dunst. Defendant instructed Judy to open all the doors to the vehicle, and while holding the gun against

Dunst, he directed Dunst into the driver's seat. Defendant then said "we're going to an ATM[…]Don't drive crazy or we all can die tonight." Dunst testified that defendant did not order him to drive to a specific ATM, but only ordered him to go to "an ATM." Judy sat in the front passenger seat, and defendant sat in the rear passenger seat while pointing the gun at Dunst. Dunst drove to a PNC Bank ATM, withdrew $200, and threw the money and receipt into the car. After looking at the receipt, defendant requested Dunst remove $60 remaining in his account. Dunst removed the additional $60, "tossed" it in the car and Judy handed it to defendant.

¶ 8 Defendant then instructed Dunst to continue driving, and gave him a series of directions that eventually led them to a factory parking lot on 47th Street. As Dunst was about to turn into the parking lot, where he thought defendant was going to shoot him, defendant ordered him to keep "driving straight." Dunst drove to Knox Street and through a nearby alley to the end of the block. Dunst parked behind an apartment building, and complied with defendant's orders to exit the vehicle. After Dunst did so, defendant drove away with Judy in the vehicle. Dunst testified that defendant "had the gun on me the whole time." Dunst could not recall how long he drove defendant, but testified that "it felt like forever."

¶ 9 After exiting his vehicle, Dunst realized that he was approximately two blocks from the Subway restaurant. He ran inside the restaurant and called 911. Dunst gave a description of both his vehicle and defendant to a responding officer, and told the officer that defendant was a "male, black, between 20 and 25, 200 pounds, wearing a black jacket, armed with a handgun." Dunst also told the officer that he "picked up this girl. We went to a motel. She went to buy a soda, and she came back with a gentleman that came in and stuck a gun in [his] face and robbed [him]," and that defendant later dropped him off in "a parking area of an apartment complex." Dunst

answered the officer's follow-up questions, and testified that he later gave similar information to a detective. The detective suggested to Dunst that he contact his bank. When Dunst contacted his bank, he informed the bank that he: filed a police report; was the victim of an armed robbery and carjacking; and was forced to withdraw the money. On cross-examination, Dunst denied telling his bank that he was robbed by people begging for change.

¶ 10 Dunst testified that on November 28, 2012, he viewed a lineup and identified defendant as the person who robbed him, took his car, pointed a gun at his head, and threatened to kill him. At the time, Dunst had an "absolute" level of certainty in the identification he made. On November 29, 2012, Dunst viewed a lineup and identified Judy.

¶ 11 Officer Ricardo Viramontes testified that, at approximately 4:12 a.m., on the date in question, he responded to a call of a robbery at the Subway restaurant at 4735 South Cicero Avenue. There, he spoke with Dunst, who gave him a description of his vehicle and the offender. Dunst described the offender as being "a male, black, approximately 5'7" in height about 200 pounds, black head of short hair, about 20 years old." Dunst also gave Viramontes a description of an unknown woman whom he was with, and told Viramontes that he did not know the woman's name. In addition, Dunst told Viramontes that the offender ordered him to "drive to the nearest cash station," where he withdrew $260. The offender also instructed him "to drive and stop at approximately 4732 West 47th Street in the alley and ordered [Dunst] to exit the vehicle." Dunst did not disclose to Viramontes that he had a conversation with the offender concerning where his vehicle was parked at the Sportsman Inn, and where he should drive after he withdrew money from the ATM. Dunst also did not disclose that he made two separate withdrawals from the ATM, and Viramontes did not ask Dunst how many withdrawals he had made. Dunst further

did not tell Viramontes that defendant threatened his life on other occasions, separate from defendant's initial entrance into the motel room. Officer Ernest Mategrano and his partner located Dunst's vehicle after Viramontes put out a flash message describing the offender and the vehicle.

¶ 12 Officer Mategrano testified that after 4:00 a.m., on November 25, 2012, he was on patrol with his partner, Officer Gene Lindgren, when they received a flash message to look for a Dodge Stratus. They located the vehicle at 4622 South Leamington. They maintained control of the vehicle until they were relieved by Officer Wendy Pacino.

¶ 13 The parties stipulated that Edward McCarten, an evidence technician, would testify that on November 25, 2012, at approximately 7:32 a.m., he arrived at 4622 South Leemington Avenue, where he photographed the exterior and interior of a vehicle. Earlier, Dunst testified that McCarten' s photographs show: the vehicle contained his wallet; a receipt from a PNC Bank reflecting a withdrawal of $200 and a remaining balance of $88.77; another receipt from PNC Bank reflecting a withdrawal of $60 and a remaining balance of $28.77; and a motel key with "212" on it.

¶ 14 Tiffany Travis testified that she has worked for nine years as the general manager of the Sportsman Inn. Part of her duties as general manager includes regularly reviewing recordings from the motel's video surveillance system, which has video cameras located in different locations on the exterior and interior of the motel. Travis testified that, in her experience, recordings from the surveillance system are accurate and reliable. The video surveillance system was working on the date and time in question. Travis regularly retrieves recordings of video footage at the request of investigators from the Chicago Police Department, during which she

will usually go over the footage with the investigators and "put it on a flash drive for them." Travis testified that on November 25, 2012, two detectives arrived at the Sportsman Inn and asked about a video from earlier that morning. That night, she reviewed footage with the detectives and recorded portions of the security video onto a memory stick.

¶ 15 Travis testified that, after viewing the video footage on the date she testified, she was able to recall events that occurred on the date in question. She recalled that, early in the morning, a "young lady" arrived at the motel with a man, whom Travis said is shown in photo exhibits of the video footage as "registering." Travis explained that the woman caught her attention because she was standing outside the motel and talking to a security guard, who was "not supposed to be fraternizing with anyone." After the man registered, the woman left with him. Within an hour of the man registering, the same woman went to the lobby by herself and bought a soda from the vending machine. Travis stated that, when the woman used the vending machine, she appeared suspicious because "she just stood for a second and looked around." Shortly thereafter, a black man—who was not the individual the woman arrived with—walked into the lobby, and the woman left with him. Travis testified that the events she observed are accurately depicted in the video she watched before testifying.

¶ 16 The State recalled Dunst to testify. Dunst testified that he viewed video footage from the Sportsman Inn, and that it showed him registering for a room at the motel. He also testified that it showed Judy with a man, both of whom were "in physical appearance and in the clothing that they were wearing consistent with how [he] observed the two individuals who entered into the motel room."

¶ 17 Detective Robert Olson, who investigated the robbery, testified that, after defendant's arrest, defendant's height and weight were recorded as 5'8" and 205 pounds. Defendant's hairstyle was recorded as short. On the same date as defendant's arrest, Olson went to the Sportsman Inn, where he viewed a video with Detective Vivas. Vivas obtained the video footage on November 29, 2012, which Olson inventoried. Olson assisted in administering the lineup Dunst viewed. Olson stated that Dunst, without hesitation, made an immediate identification of defendant.

¶ 18 The trial court admitted video footage from the Sportsman Inn, and exhibits of video-stills, into evidence. The footage shows a white man standing in a lobby, at a counter, and then leaving. About 40 minutes later, it shows a woman standing in the parking lot, and then entering the lobby and going to a vending machine. At the vending machine, the woman meets a black man, who is wearing a black jacket. The woman and the black man leave the lobby together.

¶ 19 The State rested, and the trial court denied defendant's motion for a directed finding. The parties stipulated to the admission of a business record, created by a PNC Bank employee on December 1, 2012, as an exhibit.[1] The defense rested.

¶ 20 The trial court found defendant guilty of robbery, vehicular hijacking, unlawful restraint, and kidnapping. The court also found that the State did not prove beyond a reasonable doubt that defendant was armed with a firearm because "an object was not fired" and "there are very real replicas in existence today." In reaching its decision, the court noted that Dunst's testimony was credible where his description of the events was corroborated by the property found in his vehicle after he had reported it stolen. The court also noted that Dunst's testimony was "detailed"

[1] This exhibit is not part of the record on appeal.

and that it believed his eyewitness identification. With regard to Dunst's identification of defendant, the court noted that although Dunst testified to having "some drinks with a friend over a period of several hours," he also stated that: he had "something to eat" afterwards; he did not appear impaired in the video footage from the Sportsman Inn; he stood next to defendant in a "well-lit" motel room for several minutes; his description of defendant was "accurate"; and he made a lineup identification "only three days later." Additionally, the court pointed out that the video footage was strong corroboration of the eyewitness identification because "the man in the video looks like the defendant; build, profile, the face, walk, they are all the same."

¶ 21 The trial court ordered a presentence investigation ("PSI") report, and later denied defendant's motion for a new trial.

¶ 22 At sentencing, the court heard arguments in aggravation and mitigation. In aggravation, the State argued that defendant's criminal history exhibited an increasing level of criminality. The State pointed out that defendant had a 2006 felony conviction for possession of a controlled substance, for which he unsatisfactorily terminated his probation, a 2007 Class 2 felony conviction for possession of a stolen motor vehicle, where he served intensive probation, and a 2011 conviction for misdemeanor cannabis possession, where he served five days in county jail. The State also argued that defendant's sentences for kidnapping and robbery should be "extendable" because of his criminal background. In addition, the State argued that defendant's brandishing of an alleged firearm, even if it was a replica, was aggravating, as it caused Dunst to believe he was going to be killed. The State recommended defendant be sentenced to concurrent sentences of 15, 14, and 14 years' imprisonment for his convictions for vehicular hijacking, kidnapping, and robbery, respectively.

¶ 23 In mitigation, defense counsel argued that defendant was capable of rehabilitation because he had completed intensive probation, which is "impossible" for most defendants. Defense counsel also pointed out that defendant has a loving family, had obtained a GED, has been "a model prisoner while in Cook County Jail," and before his arrest, was helping to support his family.

¶ 24 In announcing its sentencing decision, the court noted that it reviewed the PSI report, considered defendant's background, his educational work history, his family history, and criminal history. The court pointed out that defendant has had the benefit of probation on two prior occasions, and that it considered the facts of the case along with his potential for rehabilitation. The court merged all four counts related to kidnapping and unlawful restraint, and sentenced defendant to an extended term sentence of 10 years' imprisonment for a single count of kidnapping. The court also sentenced defendant to an extended term sentence of 10 years' imprisonment for robbery. In addition, defendant received a sentence of 12 years' imprisonment for vehicular hijacking. The court ordered all sentences to be served concurrently. The court denied defendant's motion to reconsider sentence.

¶ 25 On appeal, defendant first contends that the State's evidence was insufficient to prove him guilty beyond a reasonable doubt. Where a criminal conviction is challenged based on insufficient evidence, a reviewing court, considering all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 31-19 (1979)). It is the trier of fact's responsibility to determine the witnesses' credibility and the weight given to their testimony, to

resolve conflicts in the evidence, and to draw reasonable inferences from the evidence; we will not substitute our judgment for that of the trier of fact on these matters. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). Where the finding of guilt depends on eyewitness testimony, a reviewing court must decide whether, in light of the record, a fact finder could reasonably accept the testimony as true beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). In conducting this inquiry, the reviewing court must not retry the defendant. *Id.* The reviewing court must carefully examine the record evidence while bearing in mind that it was the fact finder who saw and heard the witness. *Id.* at 280. Testimony may be found insufficient under the *Jackson* standard, but only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. *Id.*

¶ 26 In this court, defendant is not disputing that the State satisfied the elements of the charged offenses, but instead challenges Dunst's eyewitness identification of him as the offender. After examining the evidence in the light most favorable to the prosecution, we conclude that a fact finder could reasonably accept Dunst's testimony as true beyond a reasonable doubt. Dunst's identification testimony was not so unreliable that there exists a reasonable doubt as to defendant's guilt.

¶ 27 A single witness' identification of the accused is sufficient to sustain a conviction if the witness viewed the accused under circumstances permitting a positive identification. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995). Illinois Courts have generally relied upon certain factors set out by the Supreme Court in *Neil v. Biggers*, 409 U.S. 188 (1972) to assess identification testimony. *Id.* Those factors are: "(1) the opportunity the victim had to view the offender at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness's prior

description of the criminal; (4) the level of certainty demonstrated by the witness at the identification confrontation; and (5) the length of time between the crime and the identification confrontation." *Id.*

¶ 28 Applying the *Biggers* factors to this case, we conclude that they weigh in the State's favor. First, Dunst had ample opportunity to view defendant in the motel room, where the lighting was turned on and defendant stood half-a-foot from Dunst. Dunst testified that he was with defendant in the motel room for ten minutes and was able to see defendant's face. After exiting the motel room, Dunst drove defendant where defendant directed him to go.

¶ 29 Second, Dunst demonstrated a sufficient degree of attention and, third, accurately described defendant. The record shows that Dunst knew the number of the motel room he was in, where his vehicle was parked, that he gave Judy $20 to get a soda, the items defendant took from him, and that defendant held a black semiautomatic handgun. Dunst also testified about driving to a PNC Bank, how many withdrawals he made, how much he withdrew each time, and the streets defendant instructed him to drive on after he withdrew the money. Although Dunst acknowledged that he was focused on defendant's gun in the motel room, he testified that defendant was a black male, 5'9" tall. Furthermore, Viramontes testified that Dunst described the offender as a 20 year-old black male with short hair, who was 5'7" tall and weighed 200 pounds. Detective Olson, who investigated the robbery, testified that defendant was a short-haired black male, who was 5'8" tall and weighed 205 pounds. Accordingly, these two factors also weigh in favor of a reliable identification.

¶ 30 With regard to the fourth *Biggers* factor, Dunst demonstrated a high degree of certainty in his identification of defendant. Dunst testified that, when he identified defendant from a lineup,

he had an "absolute" level of certainty in his identification. In addition, Olson testified that Dunst made an immediate identification of defendant without hesitation. Finally, Dunst's identification of defendant occurred shortly after the offense, as he identified defendant only three days after the robbery. See *People v. Donahue*, 2014 IL App (1st) 120163, ¶ 95 (the time between the offense and the initial identification was considered short where one of the eye witnesses identified defendant three days after the offense).

¶ 31 The *Biggers* factors also weigh in the State's favor where another witness and video evidence corroborated portion's of Dunst's testimony. See *People v. Dereadt*, 2013 IL App (2d) 120323, ¶ 24 ("In addition to the *Biggers* factors, courts also consider the totality of the circumstances when reviewing the reliability of an identification"). Dunst testified that, prior to the robbery, he gave Judy money to purchase a soda and that she returned to the room with defendant. Travis testified that she saw a woman purchase a soda from a vending machine in the lobby. Travis also saw the woman meet a black man in the lobby, and the pair exit the lobby together. The video footage from the motel similarly shows a woman standing in the parking lot, and then entering the lobby and going to a vending machine where the woman meets a black man, who is wearing a black jacket. The footage further shows the woman and the black man leaving the lobby together.

¶ 32 Defendant nevertheless argues that Dunst's identification is unreliable because Dunst told contradictory stories about what happened, and his testimony about other events calls into question his ability to have accurately observed defendant. In particular, defendant points out that, shortly after the robbery, Dunst failed to tell Viramontes that: he had made multiple ATM withdrawals; he had discussed with defendant where his car was parked at the motel and where

he should drive; and defendant threatened his life multiple times. Defendant also points out that Dunst told Viramontes that he did not know the name of the woman he met. Finally, defendant argues that Dunst could not make an accurate observation of the suspected robber because Dunst had been drinking before he was robbed.

¶ 33 Here, defendant's arguments are, essentially, asking us to reweigh the evidence in his favor and substitute our judgment for that of the trier of fact. This we cannot do. See *Brown*, 2013 IL 114196, ¶ 48 ("a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses"). The complained-of contradictions and inconsistencies were fully explored at trial, where the trier of fact is responsible for determining the witnesses' credibility and the weight to be given to their testimony, resolving conflicts in evidence, and drawing reasonable inferences from the evidence. *Ortiz*, 196 Ill. 2d at 259. Based on its decision and oral pronouncement, it is clear the trial court found Dunst to be credible. As mentioned, testimony may be found insufficient, but only where the record compels the conclusion that no reasonable person could accept it beyond a reasonable doubt. *Cunningham*, 212 Ill. 2d at 280. This is not one of those cases.

¶ 34 Defendant next contends that we should reduce his 10 year sentences for kidnapping and robbery because he was not eligible to receive extended term sentences on those offenses, as they "were not within the class of the most serious offense he was convicted of, and were not part of a separate course of conduct."

¶ 35 In setting forth this argument, defendant admits he failed to object to the imposition of the extended terms at the sentencing hearing. It is well settled that, to preserve a claim of sentencing error, both a contemporaneous objection and a written postsentencing motion raising

the issue are required. *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). Defendant argues that this issue can be reviewed for plain error.

¶ 36 To obtain relief under the plain-error doctrine, a defendant must first show that a clear or obvious error occurred. *Hillier*, 237 Ill. 2d at 545. In the sentencing context, "a defendant must then show either that (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing." *Id.* The first step of plain-error review is determining whether any error occurred. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). Here, we find no error.

¶ 37 In this case, defendant was convicted of robbery and kidnapping, which are both Class 2 felonies. 720 ILCS 5/18-1(b) (West 2012); 720 ILCS 5/10-1(c) (West 2012). Defendant was also convicted of vehicular hijacking, a Class 1 felony. 720 ILCS 5/18-3(c) (West 2012). The court sentenced defendant to extended terms of 10 years' imprisonment for robbery and kidnapping.

¶ 38 The imposition of extended-term sentences is limited to offenses within the most serious classification. *People v. Reese*, 2017 IL 120011, ¶ 83. An exception to that rule rule applies when extended-term sentences are imposed " 'on separately charged, differing class offenses that arise from unrelated courses of conduct.' " *Id.* (quoting *People v. Coleman*, 166 Ill. 2d 247, 257 (1995)). In *People v. Bell*, our supreme court held that determining whether a defendant's mulitiple offenses are part of an unrelated course of conduct requires a consideration of:

> "whether there was a substantial change in the nature of the defendant's criminal objective. If there was a substantial change in the nature of the criminal objective, the defendant's offenses are part of an 'unrelated course of conduct' and an extended-term sentence may be imposed on differing class offenses. If, however, there was no

substantial change in the nature of the criminal objective, the defendant's offenses are not part of an unrelated course of conduct, and an extended-term sentence may be imposed only on those offenses within the most serious class." 196 Ill. 2d 343, 354-55 (2001).

¶ 39 Determining whether the defendant's actions were part of an unrelated course of conduct is a question of fact for the trial court, and a reviewing court will defer to the trial court's conclusion unless that conclusion is against the manifest weight of the evidence. *Robinson*, 2015 IL App (1st) 130837, ¶ 102. "So long as the trial court's conclusions is supported by the record, *i.e.*, not unreasonable or arbitrary, we will not reverse its decision." *People v. Daniel*, 311 Ill. App. 3d 276, 287 (2000).

¶ 40 Here, although the trial court made no explicit finding regarding whether defendant's offenses were part of an unrelated course of conduct, there is a presumption that a trial court knows the law and applies it. *Robinson*, 2015 IL App (1st) 130837, ¶ 103 (noting that the trial court made no explicit statement finding that defendant's criminal objective changed, but that "there is a presumption that a trial court knows that law and applies it. [Citations.] Thus, we must presume that the trial court reasoned that there was a substantial change in defendant's criminal objective."). Therefore, given the court's imposition of extended term sentences, we must presume that the trial court found that there was a substantial change in the nature of defendant's criminal objective such that his offenses were part of an unrelated course of conduct.

¶ 41 After reviewing the record, we find that the trial court's conclusion that defendant's crimes were committed as a part of an unrelated course of conduct was not against the manifest weight of the evidence. The record shows that, after robbing Dunst of his personal property in the motel room, defendant forced Dunst to drive to an ATM because he was unhappy with the

amount of money Dunst had on his person. After Dunst withdrew $200 from the ATM, defendant ordered him to remove the remaining $60 from his account. This again suggests that defendant was unhappy with the amount of money he received from Dunst. Defendant then continued to detain Dunst, instructed him where to drive, and ultimately took possession of Dunst's vehicle. Given this evidence, it is reasonable to conclude that defendant's overarching criminal objective was to rob Dunst, and upon being dissatisfied with the amount of money Dunst had on his person, the criminal objective changed to vehicular hijacking. As such, the nature of defendant's criminal objective substantially changed from merely robbing Dunst to taking possession of his vehicle. Therefore, it was not unreasonable for the court to conclude that defendant's offenses were part of an unrelated course of conduct. Accordingly, the court did not err in imposing extended term sentences for robbery and kidnapping.

¶ 42 Defendant's final contention is that the trial court abused its discretion in imposing a sentence of 12 years' imprisonment for vehicular hijacking.

¶ 43 The Illinois Constitution requires the trial court to impose a sentence that is balanced between the seriousness of the offense and the defendant's rehabilitative potential. *People v. Knox*, 2014 IL App (1st) 120349, ¶ 46. (citing Ill. Const. 1970, art. 1, §11; *People v. Lee*, 379 Ill. App. 3d 533, 539 (2008)). To find the proper balance, the trial court must consider a number of aggravating and mitigating factors including: the nature and circumstances of the crime, the defendant's conduct in the commission of the crime, and the defendant's personal history, including his age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment, and education. *Id.* A defendant's rehabilitative potential is not entitled to greater weight than the seriousness of the offense. *People v. Coleman*, 166 Ill. 2d 247,

261 (1995). It is presumed a trial court considered all relevant mitigating and aggravating factors in fashioning a sentence, and that presumption will not be overcome absent explicit evidence from the record that the trial court failed to consider mitigating factors. *People v. Halerewicz*, 2013 IL App (4th) 120388, ¶43.

¶ 44 The trial court has broad discretionary powers in imposing a sentence, and the trial court's sentencing decision is entitled to great deference. *People v. Alexander*, 239 Ill. 2d 205, 212-13 (2010). Consequently, " 'the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently.' " *Id.* at 213 (quoting *People v. Stacey*, 193 Ill. 2d 203, 209 (2000)). Therefore, a reviewing court may not alter a defendant's sentence absent an abuse of direction by the trial court. *Id.* at 212. Moreover, when "a sentence falls within statutory guidelines, it is presumed to be proper and will not be disturbed absent an affirmative showing that the sentence is at variance with the purpose and spirit of the law or is manifestly disproportionate to the nature of the offense." *Knox*, 2014 IL App (1st) 120349, ¶ 46.

¶ 45 The sentencing range for vehicular hijacking, a Class 1 felony, is 4 to 15 years' imprisonment. 720 ILCS 5/18-3(c) (West 2012); 730 ILCS 5/5-4.5-30 (West 2012). As defendant's sentence falls within statutory guidelines, we presume it is proper. See *Knox*, 2014 IL App (1st) 120349, ¶ 46.

¶ 46 Defendant does not dispute that his sentence fell within the permissible sentencing range, or that his sentence is manifestly disproportionate to the nature of his offense. Rather, defendant argues that the trial court's sentence does not reflect his rehabilitative potential. As noted above, we presume that the trial court properly considered all relevant mitigating factors, and that

presumption will not be overcome absent explicit evidence from the record that the trial court failed to consider mitigating factors. *Halerewicz*, 2013 IL App (4th) 120388, ¶ 43. Defendant has failed to make such a showing.

¶ 47 Instead, the record shows that these factors were outlined in defendant's PSI report and defense counsel's argument in mitigation. The PSI report notes defendant's ownership of a barbershop, and the record shows that the trial court heard defense counsel's arguments that defendant obtained his GED, has never been imprisoned, and has a loving family. In addition, the trial court explained that it considered the PSI report, defendant's background, education, and his work, family, and criminal history. In light of this record, defendant essentially asks us to reweigh the sentencing factors and substitute our judgment for that of the trial court. This we will not do. See *Alexander*, 239 Ill. 2d at 213 (quoting *Stacey*, 193 Ill. 2d at 209) ("the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently").

¶ 48 Furthermore, the seriousness of the offense or the need to protect the public may outweigh mitigating factors and the goal of rehabilitation. *People v. Sims*, 403 Ill. App. 3d 9, 24 (2010). Even where there is evidence in mitigation, the court is not obligated to impose the minimum sentence. *Id.* Here, the record showed that the court considered the facts of this case in sentencing defendant, which showed that defendant brandished an item resembling a semiautomatic handgun, and threatened to kill Dunst before taking Dunst's vehicle. Furthermore, although defendant has never served prison time before, his criminal history of two felony convictions, including one for possession of a stolen motor vehicle, are significant aggravating

factors. Therefore, we cannot say that the circuit court abused its discretion in sentencing defendant to 12 years' imprisonment.

¶ 49 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 50 Affirmed.