2015 IL App (4th) 130552-U

NO. 4-13-0552

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
January 22, 2015
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
RONALD S. WILKERSON,	)	No. 12CF798
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Pope and Justice Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, upholding defendant's convictions and sentences for armed robbery where (1) the absence of a preliminary hearing did not prejudice defendant; (2) defense counsel's failure to object to the admission of prior consistent statements was not ineffective assistance of counsel; (3) sufficient evidence supported the convictions; and (4) the trial court did not err in imposing 60-year consecutive sentences.

¶ 2 In May 2013, defendant, Ronald S. Wilkerson, proceeded to jury trial on two counts of armed robbery based on the theory of accountability. The testimony of an accomplice constituted the strongest evidence of defendant's participation in both armed robberies. Following the trial, the jury found defendant guilty on both counts. In July 2013, the trial court imposed a sentence of 60 years' imprisonment on each count, with the sentences to run consecutively.

¶ 3 Defendant appeals, asserting (1) he was unconstitutionally deprived of a preliminary hearing as to count II; (2) defense counsel provided ineffective assistance of counsel for failing to object to the State's admission of prior consistent statements; (3) the evidence was insufficient to convict him beyond a reasonable doubt on either count; and (4) the trial court imposed improper and excessive sentences. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Complaints

¶ 6 1. *Count I*

¶ 7 In May 2012, the State charged defendant by information with the offense of armed robbery pursuant to section 18-2(a)(2) of the Criminal Code of 1961 (Code) (720 ILCS 5/18-2(a)(2) (West 2010)), alleging, on May 21, 2012, defendant, or one for whose conduct he was legally responsible, took United States currency from the presence of employees of Central Illinois Credit Union by threatening the imminent use of force at a time when defendant was armed with a firearm (count I). The information further stated (1) armed robbery was a Class X felony, (2) the charge was subject to a 15-year sentencing enhancement due to the use of a firearm, and (3) defendant was eligible for extended-term sentencing. Later that day, during arraignment, the trial court admonished defendant of those same sentencing guidelines, noting defendant faced a nonprobationable sentencing range of 21 to 75 years' imprisonment if convicted. During a July 2012 hearing on defendant's motion to reduce bond, the court reiterated defendant was nonprobationable and faced 21 to 75 years' imprisonment.

¶ 8 2. *Count II*

¶ 9 In September 2012, the State charged defendant by information with a second count of armed robbery pursuant to section 18-2(a)(2) of the Code, alleging, on May 8, 2012,

defendant, or one for whose conduct he was legally responsible, took United States currency from the presence of an employee of Marine Bank by threatening the imminent use of force while armed with a firearm (count II). The information stated (1) armed robbery was a Class X felony, (2) the charge was subject to a 15-year sentencing enhancement due to the use of a firearm, and (3) defendant was eligible for extended-term sentencing. On May 6, 2013, the trial court formally arraigned defendant on count II, admonishing him as to those sentencing guidelines. Defense counsel did not request, nor did defendant receive, a preliminary hearing on count II.

¶ 10 B. Jury Trial

¶ 11 On May 20, 2013, defendant's case proceeded to jury trial on both counts. Prior to jury selection, the trial court again admonished defendant as to the possible sentence he faced if convicted. At that time, the court noted that if defendant was convicted on both counts, the court could, in its discretion, impose consecutive sentences, thus subjecting defendant to incarceration of up to 120 years. Defense counsel stated he was unaware defendant faced the possibility of consecutive sentences. The court provided counsel an opportunity to speak with defendant, after which defendant indicated he was ready to proceed to trial.

¶ 12 1. *Undisputed Evidence*

¶ 13 On May 8, 2012, at approximately 10:00 a.m., Prentice Taylor and William Terry Jackson entered the Central Illinois Credit Union located at West John Street in Champaign. Both men wore black shoe polish on their faces. Taylor pointed a firearm at one of the bank tellers and demanded the employees and a customer lie on the ground, while Jackson walked around the counter to gather cash from the teller drawers. In all, Jackson collected approximately $20,000 during the commission of the robbery.

¶ 14 On May 21, 2012, at approximately 3:00 p.m., Jackson, wearing a white T-shirt and a white cap, entered the Marine Bank on South Neil Street in Champaign wielding a firearm, and he took over $10,000 before fleeing the bank.

¶ 15 At the time of trial, Jackson faced federal charges for the armed robberies occurring on both May 8, 2012, and May 21, 2012. Taylor faced federal charges for the armed robbery on May 8, 2012.

¶ 16 2. *The Investigation*

¶ 17 Special Agent Harvey Pettry from the Federal Bureau of Investigations testified, on May 21, 2012, at approximately 2:30 p.m., he was off-duty and driving his personal vehicle, when he observed two male individuals walking down the street and watching Regions Bank. Due to numerous recent bank robberies, Pettry became suspicious of their interest in the bank. Pettry lost sight of the men as he circled his car around, but he subsequently noticed two men walking down an alley. Shortly thereafter, Pettry observed a black Dodge Ram quad-cab truck exit the alley. A similar vehicle was a suspect vehicle in other robbery cases. Pettry then followed the truck and wrote down the license plate information. He also noted the unique features of the truck, including the chrome tire rims and other chrome features, a unique bed cover, and the words "Sexy Brute" or "Sexy Drive" on the window. Because Pettry was in a personal vehicle, he contacted the Champaign police department regarding his suspicions and ceased following the suspect vehicle.

¶ 18 Detective Patrick Funkhouser testified, on May 21, 2012, after receiving a call from Pettry about the suspicious Dodge Ram, he drove toward Regions Bank and observed a black Dodge Ram in an alley near the bank. He noted the truck had a unique bed cover, chrome step bars, a chrome gas cap, a spoiler, and tinted windows. Due to previous investigations,

Funkhouser testified a Dodge Ram belonging to defendant was of "investigatory concern." He attempted to conduct surveillance on the truck but quickly lost sight of it. He then alerted law enforcement that he believed another robbery was imminent.

¶ 19 Immediately upon learning of the May 21, 2012, robbery of Marine Bank, Funkhouser broadcast a description and the license plate information of the Dodge Ram. He then proceeded to Marine Bank, where the surveillance camera revealed the Dodge Ram circling the bank's parking lot. He also determined the suspect in the Marine Bank robbery bore a strong resemblance to one of the suspects in the Central Illinois Credit Union robbery—Jackson—and directed law enforcement to make contact with Jackson for questioning.

¶ 20 In the meantime, Detective Sergeant David Griffet pursued the Dodge Ram. At approximately 4:00 p.m. on May 21, 2012, while searching for the suspect vehicle, Griffet passed the Dodge Ram, which was driven by a white female, and followed it to a house on Southwood Drive. After a few minutes of surveillance, Griffet approached the vehicle and the white female, April Hale, who had been driving it. Hale said she was driving the truck because her boyfriend, defendant, borrowed her car.

¶ 21 Hale testified she left work on May 21, 2012, around 3:00 p.m. and drove home to her Southwood Street address. Shortly thereafter, at approximately 3:15 to 3:20 p.m., defendant arrived in his Dodge Ram. Defendant came into the house, but a passenger remained outside. Hale stated that defendant remained at the house for 5 to 10 minutes, but she was not paying much attention to his whereabouts within the house because she was in the bathroom preparing to leave for her child's concert. Defendant then asked to borrow her car and she consented, believing he intended to install a subwoofer in her car. In turn, defendant left Hale the Dodge Ram and told her to drive with the windows down.

¶ 22 At approximately 4:20 p.m., law enforcement made contact with Jackson. After speaking with Jackson, Funkhouser obtained consent from Hale to search her residence. There, he recovered a white T-shirt and cap, both smeared with black shoe polish, which lab results later revealed to contain Jackson's deoxyribonucleic acid. He also located a large metal pot full of ashes. Though the search of the residence yielded no firearms, officers subsequently searched Hale's backyard based on a tip from Jackson and recovered a firearm with a live magazine that matched the description of the firearm used in the May 8, 2012, and May 21, 2012, robberies.

¶ 23 Around 7:00 p.m., Pettry made contact with defendant at his home on Honeysuckle Street. Defendant admitted being near Regions Bank around 3:00 p.m. but stated he was there to sell some tire rims, not to rob a bank. When he failed to complete the sale, he drove to Hale's house and exchanged vehicles with her. Defendant admitted he, Jackson, and Taylor drove to Kankakee earlier in the day; however, he denied being involved in the planning or execution of a robbery. He further stated the Dodge Ram had been in his possession all day until he exchanged vehicles with Hale shortly after 3:00 p.m.

¶ 24 During the interview with defendant, Pettry received authorization to arrest defendant for the May 21, 2012, robbery of Marine Bank. Additionally, police impounded the Dodge Ram. While searching the Dodge Ram, Funkhouser recovered a key fob for a Jeep Liberty. Upon speaking with Funkhouser after his arrest, Jackson disclosed the getaway vehicle in the May 8, 2012, robbery of Central Illinois Credit Union was a black Jeep Liberty. Police then made contact with Kandis Ramsey, defendant's other girlfriend, who owned a black Jeep Liberty. The key fob opened the locks on the vehicle. Kandis told police she drove her Jeep to work on May 8, 2012, around 9:00 a.m. and found it in the same parking spot when she left work that evening.

¶ 25 3. *Testimony From Jackson and Taylor*

¶ 26 a. Jackson's Testimony

¶ 27 At trial, Jackson testified he faced federal charges for both the May 8, 2012, and May 21, 2012, robberies and admitted his involvement in both robberies. The jury learned Jackson had a 2009 aggravated-battery conviction as well as a 2002 armed-robbery conviction. He also stated he signed a cooperation agreement with the federal government for consideration at sentencing in exchange for presenting truthful testimony. He said that the federal government made him no promises and that he was telling the truth "because it's the right thing to do."

¶ 28 As to the May 8, 2012, robbery, Jackson stated he, Taylor, and defendant planned to rob Central Illinois Credit Union. Defendant drove his black Jeep Liberty, and he served in the role of getaway driver and police-scanner monitor. According to Jackson, defendant actively engaged in the planning of the robbery and provided a firearm to Taylor. Afterward, defendant drove the three men to Mahomet while Jackson counted and divided the money.

¶ 29 As to the May 21, 2012, robbery, Jackson testified, earlier in the day, the same three men drove to Kankakee in defendant's Dodge Ram looking for locations to rob. Unsatisfied with their options, the men returned to the Champaign area. The men first canvassed Regions Bank and subsequently prepared to rob the facility by putting on gloves and smearing black shoe polish on their faces. However, they had "a bad feeling" about robbing Regions Bank and ultimately decided to look elsewhere.

¶ 30 While driving around to find another location, Jackson said defendant thought they were being followed. Taylor no longer wanted to be involved, so defendant dropped him off at another location. Defendant and Jackson continued on to Marine Bank and, after canvassing the location, decided to rob it. Jackson said defendant provided the gun, and Jackson

robbed the bank at gunpoint while defendant remained in Dodge Ram as the getaway driver. Afterward, defendant heard his vehicle referenced on the police scanner. According to Jackson, defendant drove to Hale's house to exchange vehicles. Defendant also took the firearm into the house. Jackson further stated he left the white shirt and cap he wore during the robbery at Hale's house for defendant to burn. Defendant and Jackson counted and split the money, and defendant then dropped him off at home.

¶ 31 When asked by the State whether he gave this same version of events upon his arrest, Jackson stated that he did. The State then asked Jackson about his prior consistent statements without objection from defendant.

¶ 32 Prior to the filing of federal charges for the armed robberies, Jackson was detained on State armed-robbery charges. Jackson admitted that while he was incarcerated on the State's armed-robbery charges, in June 2012, he wrote a letter exonerating defendant. Jackson said he agreed to write the letter after defendant threatened him and his family. Jackson explained defendant gave him a prewritten letter to copy in his own handwriting, which Jackson subsequently did. Within the letter, Jackson admitted (1) he borrowed defendant's truck on the morning of May 21, 2012; (2) defendant had no idea Jackson intended to use the truck as a getaway vehicle; and (3) defendant was not present during the robbery. Jackson went on to write, "the detectives used my intoxication, and my circumstances to convince me to implicate [defendant] in a crime he never committed." The letter stated Jackson implicated defendant in an attempt to negotiate a lesser sentence. At the time of the letter, Jackson did not have a cooperation agreement in place. Jackson could not produce the original letter defendant purportedly sent him to copy.

¶ 33 b. Taylor's Testimony

¶ 34 Prentice Taylor also testified regarding defendant's involvement in the May 8, 2012, and May 21, 2012, armed robberies. Taylor had pending federal charges based on the May 8, 2012, armed robbery of Central Illinois Credit Union. Like Jackson, Taylor signed a cooperation agreement with the federal government and agreed to testify truthfully.

¶ 35 Regarding the May 8, 2012, robbery, Taylor testified he borrowed defendant's Jeep Liberty earlier in the day to impress his girlfriend. Taylor explained he later came across Jackson, and the two decided to commit a robbery. According to Taylor, he and Jackson planned and executed the May 8, 2012, bank robbery alone; defendant was not involved. Afterward, Taylor returned defendant's Jeep Liberty.

¶ 36 Taylor denied any involvement in the May 21, 2012, robbery. According to Taylor, he, Jackson, and defendant drove to Kankakee earlier that day in defendant's black Dodge Ram to look at a vehicle and then returned home to Champaign. On the way home, defendant learned Jackson had a firearm in his possession. Taylor said the presence of a firearm bothered defendant, so they dropped the firearm off at Taylor's car, which was parked at Regions Bank. Defendant subsequently received a phone call and decided to leave. After driving himself to his niece's residence, defendant allowed Taylor and Jackson to borrow the Dodge Ram. From there, Taylor and Jackson began to plan another robbery. However, after an argument over who would carry the firearm, Taylor decided not to participate. Taylor testified he picked up another individual, Stacey Dillard, before returning to his own vehicle and leaving. He said he knew nothing about the robbery of Marine Bank, nor did defendant.

¶ 37 The State questioned Taylor about a contradictory story he conveyed to Agent Pettry on numerous occasions. In October 2012 and again on May 8, 2013, after signing a cooperation agreement with the federal government, Taylor told Pettry defendant participated in

the May 8, 2012, robbery of Central Illinois Credit Union as the getaway driver, driving a black Jeep Liberty. Taylor said defendant provided him with a firearm and parked at a nearby restaurant until Jackson and Taylor completed the robbery. Additionally, Taylor told Pettry that he, Jackson, and defendant drove to Kankakee on May 21, 2012, in search of a bank to rob. After returning to Champaign in defendant's Dodge Ram, defendant and Jackson scouted for locations, but Taylor maintained he left before they could make a final decision regarding which location to rob.

¶ 38 Pettry testified, on May 8, 2013, Taylor indicated his intention to withdraw his cooperation with the federal government because, regardless of any sentencing consideration, he would still spend the remainder of his life in prison. Pettry acknowledged Taylor did not implicate defendant in either robbery until after he received the federal-cooperation agreement.

¶ 39 On December 9, 2012, Taylor signed a handwritten affidavit stating he and defendant were not involved in the May 21, 2012, robbery. In the affidavit, he stated defendant went to his niece's house prior to Jackson and Taylor planning the robbery. Taylor then picked up Dillard to join them. However, after an argument with Jackson, Taylor stated he left, leaving Dillard and Jackson to plan the robbery.

¶ 40 On this evidence, the jury returned a guilty verdict on both counts.

¶ 41 C. Posttrial and Sentencing Hearings

¶ 42 In June 2013, defendant filed a posttrial motion for judgment notwithstanding the verdict or, in the alternative, for a new trial. Defendant asserted the State failed to prove him guilty beyond a reasonable doubt, and the jury's verdict resulted from passion, bias, and prejudice. The motion also alleged defendant was denied due process, equal protection, and a

fair trial. In July 2013, the trial court denied the motion. Immediately thereafter, defendant's sentencing hearing commenced.

¶ 43 1. *Presentence Investigation Report*

¶ 44 The presentence investigation report revealed the following information. At the time of sentencing, defendant had a criminal-sexual-assault case pending. As a juvenile, in 1981, defendant was placed on probation for the offense of battery, which he ultimately violated numerous times before receiving a sentence to the Illinois Department of Corrections, Juvenile Division. As an adult, defendant had convictions for a (1) 1987 forgery, for which he received conditional discharge; (2) 1987 attempted murder and armed robbery, for which he received 40 years' imprisonment; and (3) 2011 possession of a controlled substance, for which he received probation. Due to accruing the 2012 armed-robbery convictions, the probation department requested defendant be unsuccessfully discharged from probation following the sentencing hearing in the present case.

¶ 45 While on probation, though defendant was discharged unsuccessfully from substance-abuse treatment in August 2011 for failing to attend counseling and consuming alcohol, he ultimately reengaged in treatment and was successfully discharged in November 2011. Four random drug screens, taken June 2011, August 2011, September 2011, and February 2012, came back negative for illegal substances.

¶ 46 According to the report, defendant resided with his wife, children, and stepchildren in Champaign, Illinois. Those individuals, as well as his mother and siblings, provided him with positive local support. Defendant had two adult children and three children under the age of five. He was not court-ordered to pay child support; however, he said he provided financial support when he was able and also spent time with his children as he pleased.

Defendant was aware of another child with Dana M., but she gave the child up for adoption at birth.

¶ 47 As a child, defendant lived with his mother until her incarceration in 1980, at which time he lived with several different family members as well as in a "couple" of group homes. He attended high school until the end of his junior year, at which time he was expelled. Shortly thereafter, he was incarcerated as a result of violating his juvenile probation. Defendant had not obtained a high school diploma or general equivalency degree.

¶ 48 At the time of sentencing, defendant was unemployed due to his incarceration. Prior to that, defendant had numerous jobs from March 2008 to May 2012. Defendant described both his physical and mental health as "fair." He reported his last use of crack cocaine was in November 2010. Defendant admitted to committing crimes while under the influence of both alcohol and drugs but denied committing crimes for the purpose of procuring alcohol or drugs. When asked how he felt about the current offense, defendant stated, "I'm in jail for something I didn't do and it's unfair."

¶ 49 2. *Evidence in Aggravation*

¶ 50 In aggravation, the State called David Spence, an assistant State's Attorney in Macon County who prosecuted defendant's 1987 attempted murder and armed robbery case, to testify. Spence elaborated on the details of the case, explaining, in October 1987, defendant entered a gas station armed with a pipe and repeatedly battered the two female employees with the pipe until they were unconscious. Defendant then stole approximately $1,000 and fled. The women suffered severe physical and psychological trauma as a result of defendant's actions. As a result, the Macon County trial judge found defendant's actions constituted brutal and heinous

conduct indicative of wanton cruelty, thereby making defendant eligible for the 40-year extended sentence he subsequently received.

¶ 51 Michelle Stone testified, in August 2009, she worked at a Circle K gas station in Urbana. Around 11:00 a.m. on August 14, 2009, defendant entered the store and sprayed pepper spray directly into her face and grabbed a bag of cash Stone held for deposits. At the time, Stone was eight months pregnant. A coworker provided similar testimony.

¶ 52 Detective Funkhouser testified regarding defendant's pending sexual-assault case. He testified, in June 2012, while speaking with Jackson about the pending robbery cases, Jackson confessed to committing a sexual assault alongside defendant. Jackson then provided Funkhouser the address and description of the woman. The woman, Dana M., verified defendant assaulted her. Funkhouser testified Taylor confirmed this story. Taylor purportedly watched defendant enter Dana M.'s residence, then return a few minutes later for Jackson "to come take his turn." When questioned by Funkhouser, defendant described the sexual encounter as consensual.

¶ 53 Dana M. testified, in May 2012, she had a casual sexual relationship with defendant. On May 18, 2012, Dana M. told defendant their relationship had to end. Later that day, he sent her a text telling her to "get naked" because "I'm bringing my home boys over." Dana M. stated that she responded "No, I'm not okay with that," but defendant arrived with two friends. Though she refused to have sexual intercourse with him three different times, she ultimately complied with his demands. She described her mental state as "shocked and scared and distraught." She said defendant and Jackson both had sexual intercourse with her while the third individual watched. Dana M. testified she became pregnant as a result of this incident and gave the baby up for adoption. However, Dana M. admitted writing to defendant in jail in June

2012, saying that she missed having sex with him. She explained, at the time, she was in denial and felt she somehow "deserved" to be assaulted.

¶ 54 3. *Evidence in Mitigation*

¶ 55 As evidence in mitigation, Rochella Crawford, defendant's sister, testified she and her 10 children had a close relationship with defendant. She also described his relationship with his own children as very close, stating, "when kids see him, they run and jump all over him. *** They love him. He always give [*sic*] them hugs *** and encourage [*sic*] them to do positive things." She also noted his incarceration left a "big void" in their lives because he could no longer care for their terminally ill mother.

¶ 56 Johnnie Wilkerson, defendant's uncle, testified he had a loving and close relationship with defendant. He also described defendant as a loving father. Banessa Thomas testified she shared a child with defendant. She stated defendant saw his child almost every day, and he was a good father to his child and her other children.

¶ 57 Defendant exercised his right to make a statement in allocution. Defendant maintained his innocence and asserted he did not receive a fair trial. He then explained his normal daily routine, which started with driving to Mahomet to pick up the mother of one of his children and her children. He would then drop all of the children off at their respective schools and day care before taking the children's mother and then himself to work. Defendant stated he had a good job, so he had no need to rob anyone. He also denied committing a sexual assault against Dana M. He further noted police never found any evidence of the armed robberies on him or at his house.

¶ 58 4. *Imposition of Sentence*

¶ 59 In imposing defendant's sentence, the trial court noted it considered (1) the presentence investigation report; (2) counsels' arguments; (3) defendant's statement; (4) the evidence in aggravation; (5) the evidence in mitigation; (6) the statutory factors in aggravation and mitigation; and (7) the evidence adduced at trial. The court found no statutory factors in mitigation and further noted, "there is very little mitigation at all in this record." The court further found two "obvious" factors in aggravation—defendant's prior criminal history and the need for deterrence.

¶ 60 The trial court noted the robbery at Central Illinois Credit Union depicted a "chilling scene," as Taylor pushed an employee to the floor and held a gun to her head. Despite defendant's protestations of innocence, the court found defendant's involvement "pretty obvious" at the culmination of the evidence. The court also noted defendant's 1987 attempted murder and armed robbery convictions resulted from a "chilling crime" in which he "literally beat two women half to death with a pipe to steal money."

¶ 61 The trial court then imposed a sentence of 60 years' incarceration on both counts. Based on the court's discretion to impose consecutive sentences, the court asserted, "consecutive sentences are required to protect the public from further criminal conduct by the defendant," stating defendant's (1) prior convictions, including the 1987 attempted murder and armed robbery case for which defendant was released from prison in 2008; (2) the alleged sexual assault of Dana M. in 2012; (3) the alleged Circle K robbery in 2009; and (4) the two bank robberies revealed defendant as "violent, dangerous, [and] manipulative."

¶ 62 Defendant did not file a motion to reconsider his sentence.

¶ 63 This appeal followed.

¶ 64 II. ANALYSIS

¶ 65 On appeal, defendant asserts the following reversible errors occurred before the trial court: (1) he was unconstitutionally deprived of a preliminary hearing as to count II; (2) defense counsel provided ineffective of counsel for failing to object to the State's admission of prior consistent statements; (3) the evidence was insufficient to convict him beyond a reasonable doubt on each count; and (4) the trial court imposed improper and excessive sentences. We address defendant's contentions in turn.

¶ 66 A. Ineffective Assistance of Counsel

¶ 67 Defendant first argues he received ineffective assistance of counsel when defense counsel failed to (1) demand a preliminary hearing as to count II, and (2) object to the admission of an accomplice's prior consistent statements.

¶ 68 We review ineffective-assistance-of-counsel claims *de novo*. *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 25, 960 N.E.2d 27. To prove ineffective assistance of counsel, defendant must demonstrate counsel's (1) performance fell below an objective standard of reasonableness; and (2) deficient performance resulted in prejudice to the defendant such that, but for counsel's errors, the result of the proceeding would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). If a defendant fails to prove either prong of the *Strickland* test, his claim for ineffective assistance of counsel must fail. *People v. Sanchez*, 169 Ill. 2d 472, 487, 662 N.E.2d 1199, 1208 (1996).

¶ 69 1. *Counsel's Failure To Demand a Preliminary Hearing*

¶ 70 Defendant asserts his conviction as to count II should be vacated because he received ineffective assistance of counsel when defense counsel failed to demand a preliminary hearing. We disagree.

¶ 71 The Illinois Constitution provides "[n]o person shall be held to answer for a crime punishable by death or by imprisonment in the penitentiary unless either the initial charge has been brought by indictment of a grand jury or the person has been given a prompt preliminary hearing to establish probable cause." Ill. Const. 1970, art. I, § 7. The purpose of this procedural step is "to afford the accused protection against surprise, unfairness, and inadequate preparation." *People v. Stafford*, 325 Ill. App. 3d 1069, 1074, 759 N.E.2d 115, 120 (2001).

¶ 72 It is undisputed defendant did not receive a preliminary hearing with respect to count II. However, defendant fails to demonstrate how defense counsel's lack of objection to the absence of a preliminary hearing or indictment prejudiced him. In September 2012, the State filed count II, alleging defendant participated in the commission of the armed robbery at Central Illinois Credit Union on May 8, 2012. On May 6, 2013, shortly before the trial commenced, the trial court formally arraigned defendant as to count II. Defense counsel did not ask for a continuance, confess surprise, state he was unprepared, or in any way indicate proceeding to trial on count II would result in surprise or unfairness. Rather, the record clearly demonstrates defense counsel (1) received discovery throughout the pendency of the case; and (2) actively participated on his client's behalf at trial, including cross-examining witnesses as to count II. The record also memorialized a September 2012 court hearing at which defense counsel was present, where the State represented it supplied a copy of count II to defense counsel. The trial did not commence until May 2013, giving defense counsel and defendant approximately nine months to prepare for trial as to count II. Therefore, we conclude defendant was not prejudiced by defense counsel's failure to object to the absence of a preliminary hearing and, accordingly, defendant cannot establish ineffective assistance of counsel on this issue.

¶ 73 2. *Counsel's Failure To Object to the Admission of Prior Consistent Statements*

¶ 74 Defendant next asserts defense counsel provided ineffective assistance of counsel by failing to object to the State's admission of Jackson's prior consistent statements.

¶ 75 Generally, the State cannot bolster a witness's credibility by introducing prior statements that are consistent with the witness's trial testimony. *People v. Ruback*, 2013 IL App (3d) 110256, ¶ 26, 988 N.E.2d 745. "Such statements are inadmissible hearsay and may not be used to bolster a witness's testimony." *Id*. The question we must consider is whether defense counsel chose not to object to the line of questioning as a matter of trial strategy. A strong presumption exists that an attorney's challenged action or inaction may have been the product of a reasonable trial strategy, and "[m]atters of trial strategy are generally immune from claims of ineffective assistance of counsel." *People v. Smith*, 195 Ill. 2d 179, 188, 745 N.E.2d 1194, 1200 (2000).

¶ 76 Here, defendant takes exception to a line of questioning presented by the State during the direct examination of Jackson. After Jackson provided detailed testimony stating defendant was involved in the planning and execution of the May 8, 2012, and May 21, 2012, armed robberies, the State asked whether his testimony at trial was consistent with his previous interviews with police. After Jackson agreed his testimony was consistent, the State went through individual portions of Jackson's interviews to ask whether each portion was consistent with his testimony at trial. Jackson indicated his statements were consistent. Throughout the exchange, defense counsel failed to object to the admission of the prior consistent statement.

¶ 77 However, Jackson's two consistent statements were not the only statements he made regarding defendant's involvement in the armed robberies. After speaking with police, but prior to testifying, Jackson submitted a letter denying defendant was involved in the armed

robberies and asserting the police compelled him to implicate defendant. This letter provided the source for a significant portion of defense counsel's cross-examination of Jackson.

¶ 78 Even if the State had not introduced Jackson's prior consistent statements during direct examination, once defense counsel used the letter to impeach Jackson with a prior inconsistent statement, the State would have been permitted to produce prior consistent statements on redirect to bolster Jackson's credibility. See Illinois Rule of Evidence 613(b) (eff. Jan. 1, 2011). In other words, the prior consistent statement would have been admitted into evidence, if not during direct examination, then on redirect examination.

¶ 79 Given the likelihood that Jackson's statements would inevitably be admitted as evidence, defense counsel could have reasonably chosen not to object to the prior consistent statements because he knew those statements would inevitably be presented to the jury. Thus, by permitting the State to elicit otherwise inadmissible statements, defense counsel removed the sting of the State introducing those statements on redirect. Accordingly, we conclude defense counsel's failure to object to the admission of Jackson's prior consistent statements fell within the realm of trial strategy and defeats defendant's ineffective-assistance-of-counsel claim on this issue.

¶ 80 B. Insufficient Evidence

¶ 81 Defendant next argues the evidence was insufficient to support his armed-robbery convictions. Where defendant challenges the sufficiency of the evidence, we must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the necessary elements to prove defendant guilty beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 114, 871 N.E.2d 728, 740 (2007). A conviction will not be upheld where the evidence is so improbable or unsatisfactory as to give rise to reasonable

doubt. *People v. Smith*, 185 Ill. 2d 532, 542, 708 N.E.2d 365, 370 (1999). "It falls within the province of the trier of fact to judge the credibility of witnesses, resolve conflicts in the evidence, and draw conclusions based on all the evidence." *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 21, 954 N.E.2d 718. "The trier of fact is free to accept or reject as much or as little of a witness's testimony as it pleases." *Id.* ¶ 22, 954 N.E.2d 718.

¶ 82 To support a conviction, the State was required to prove defendant guilty of armed robbery based on the theory of accountability. It is undisputed Jackson committed the May 21, 2012, armed robbery of Marine Bank, and Taylor and Jackson committed the May 8, 2012, armed robbery of Central Illinois Credit Union. The question is whether the State proved defendant was accountable for those robberies. To prove accountability, the State had to prove "either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicit[ed], aid[ed], abet[ted], agree[d], or attempt[ed] to aid that other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2010). "Mere presence at the scene of a crime does not render a person accountable for an offense; a person's presence at the scene of a crime, however, may be considered with other circumstances by the trier of fact when determining accountability." *Id.*

¶ 83 Defendant asserts the only evidence linking him to either armed robbery is Jackson's incredible testimony. In so arguing, defendant notes Jackson provided inconsistent statements throughout the pendency of the case, had felony convictions impeaching his credibility, and had a motive to lie to take advantage of a federal-cooperation agreement. Defendant argues that, without Jackson's testimony, the State failed to prove defendant aided and abetted the crime because, at most, the State proffered insufficient evidence independent of Jackson's testimony to prove more than defendant's presence at the crime scene. Moreover,

defendant argues his alleged "mere presence" at the crime scene was insufficient to support a conviction, even if he had fled the scene or had knowledge of a crime being committed. See *People v. Velez*, 388 Ill. App. 3d 493, 512, 903 N.E.2d 43, 60 (2009). Additionally, even if he had consented to or had knowledge of the commission of the crime, such evidence was insufficient to constitute a crime based on the aiding, abetting, planning, or commission of the offense. *People v. Martinez*, 242 Ill. App. 3d 915, 923, 611 N.E.2d 1027, 1032 (1992).

¶ 84 Here, Jackson's testimony at trial outlined defendant's involvement as the getaway driver in both armed robberies. Jackson also testified defendant engaged in the planning of those robberies. Even after hearing impeachment testimony about Jackson's prior inconsistent statements and his criminal record, the jury found his testimony to be credible. See *People v. Austin*, 349 Ill. App. 3d 766, 769, 812 N.E.2d 588, 591 (2004) (it is for the trier of fact to determine the credibility of witnesses). Furthermore, when paired with the extensive circumstantial evidence presented in this case, we cannot conclude that no rational trier of fact could have found defendant guilty.

¶ 85 Other than Jackson's testimony implicating defendant in the planning and commission of the offense, the following circumstantial evidence supported the jury's finding. First, defendant admitted to driving his uniquely detailed Dodge Ram on May 21, 2012, and police noticed that same Dodge Ram in the vicinity of the Marine Bank parking lot prior to the robbery. Defendant told police he had the vehicle all day and no one else had driven it until after 3:00 p.m. Moreover, the Dodge Ram contained a key fob that activated the locks on a black Jeep Liberty owned by one of defendant's girlfriends. That Jeep Liberty was the suspect vehicle in the May 8, 2012, robbery. Defendant also admitted to being with Jackson and Taylor earlier in the day on May 21, 2012.

¶ 86 Second, though Taylor testified defendant was not involved in the armed robberies, he provided a prior statement to police implicating defendant. Taylor even detailed the location where defendant parked the car for the May 8, 2012, robbery, which was consistent with Jackson's description. Based on the evidence presented, the jury could have reasonably found Taylor's prior statement more credible than his trial testimony.

¶ 87 Third, Jackson testified defendant provided the firearm in both robberies, and that defendant took the gun with him when he entered Hale's Southwood Street residence. Police conducted a search and discovered the firearm in the backyard. Inside the home, a place Jackson had never been before, police discovered the white cap and white shirt worn by Jackson in committing the May 21, 2012, robbery.

¶ 88 After considering all of the evidence, a rational trier of fact could have found defendant committed armed robberies on both May 8, 2012, and May 21, 2012, based on an accountability theory.

¶ 89 C. Sentencing

¶ 90 Defendant's final argument is that the trial court imposed both an improper and excessive sentence. We address these arguments separately.

¶ 91 1. *Improper Sentence*

¶ 92 With respect to his argument that the trial court imposed an improper sentence, defendant asserts the State failed to provide sufficient notice of his sentencing enhancement on the face of the information. Whether defendant received sufficient notice of the sentencing enhancement is a question of statutory interpretation subject to *de novo* review. *People v. Easley*, 2014 IL 115581, ¶ 13, 7 N.E.3d 667.

¶ 93 Defendant asserts the State, for the first time at sentencing, raised the issue of enhancing defendant's sentence based on his 1987 convictions for armed robbery and attempted murder that included a finding that his actions constituted brutal and heinous conduct indicative of wanton cruelty. Defendant argues an enhancement based on his prior convictions absent notice to defendant violated section 111-3(c) of the Code of Criminal Procedure of 1963 (725 ILCS 5/111-3(c) (West 2010)). In so arguing, defendant overlooks the language contained in section 111-3(c). The provision expressly states notice of a sentencing enhancement is necessary when "a sentence which is increased by a prior conviction from one classification of offense to another higher level classification." *Id.* The provision then states "it does not include an increase in the sentence applied within the same level of classification of offense." *Id.*

¶ 94 Here, defendant was charged with the Class X felony of armed robbery and was eligible for extended-term sentencing due to his 1987 armed-robbery conviction. His 1987 conviction did not serve to increase the classification of his current armed-robbery offenses. Thus, the State was not required to give notice of the prior conviction under section 111-3(c). See *People v. Jameson*, 162 Ill. 2d 282, 291, 642 N.E.2d 1207, 1211 (1994) (the State is not required to notify a defendant in advance of trial that he could receive an increased sentence based on his prior criminal convictions).

¶ 95 Not only is section 111-3(c) inapplicable in this case, but defendant also received notice of his eligibility for an extended term numerous times during the course of proceedings. First, both counts specifically note defendant is eligible for extended-term sentencing. Moreover, in May 2012, the trial court admonished defendant on numerous occasions that he was eligible for extended-term sentencing. Finally, later that month, immediately preceding the trial, the court admonished defendant about his eligibility for extended-term sentencing on both

counts and that the court had the discretion to impose consecutive sentences. Accordingly, defendant's argument that he lacked notice of his eligibility for extended-term sentencing is without merit.

¶ 96 2. *Excessive Sentence*

¶ 97 Defendant next contends the trial court erred by imposing an excessive sentence of 60 years' incarceration on each count, with those counts to run consecutively.

¶ 98 The court has discretion in sentencing and we will not reverse the court's decision absent an abuse of that discretion. *People v. Snyder*, 2011 IL 111382, ¶ 36, 959 N.E.2d 656. The court is granted such discretion in sentencing because "the trial court is in a better position to judge the credibility of the witnesses and the weight of the evidence at the sentencing hearing." *People v. Ramos*, 353 Ill. App. 3d 133, 137, 817 N.E.2d 1110, 1115 (2004).

¶ 99 Where a defendant fails to file a motion to reconsider his or her sentence to preserve sentencing issues on appeal, the court's sentencing decision will only be overturned if the defendant demonstrates plain error. See *People v. Moreira*, 378 Ill. App. 3d 120, 131, 880 N.E.2d 263, 272 (2007). Under the plain-error doctrine, the first step is to determine whether a clear or obvious error occurred. *People v. Piatkowski*, 225 Ill. 2d at 551, 565, 870 N.E.2d 403, 411 (2007). If the reviewing court determines a clear or obvious error occurred, the second step is to determine whether (1) "the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error"; or (2) the "error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *Id.*, 870 N.E.2d at 410-11. Thus, we turn to whether the court abused its discretion by committing a clear or obvious error in sentencing defendant to consecutive 60-year terms of imprisonment.

¶ 100 The trial court errs where the sentence is "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210, 737 N.E.2d 626, 629 (2000). We presume the sentencing court considered all relevant factors in aggravation and mitigation unless the record affirmatively reveals otherwise. *People v. Chirchirillo*, 393 Ill. App. 3d 916, 927, 913 N.E.2d 635, 645 (2009). As the court determines an appropriate sentence, "a defendant's history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed." *People v. Hernandez*, 319 Ill. App. 3d 520, 529, 745 N.E.2d 673, 681 (2001).

¶ 101 Defendant asserts the trial court ignored his evidence in mitigation, namely, the family members who testified on his behalf. We begin by noting the court specifically stated it considered, among other evidence, the evidence in mitigation. However, the court stated it found "little" evidence in mitigation, despite listening to testimony from defendant's witnesses, who indicated he was a good man and a good father. The court was not obligated to find the testimony credible given the evidence presented at trial and at the sentencing hearing. See *People v. Garibay*, 366 Ill. App. 3d 1103, 1111, 853 N.E.2d 893, 900 (2006) ("It [is] the trial court's responsibility to consider this mitigating evidence, determine what weight to give it, and balance it against evidence in aggravation."). Given the evidence the court heard about defendant's criminal history of violent offenses, the court was under no obligation to find defendant's witnesses credible.

¶ 102 Conversely, numerous facts presented in aggravation support the trial court's sentence. In 1987, defendant received a 40-year sentence for an armed robbery and attempted murder after the Macon County trial judge found his actions to constitute brutal and heinous

conduct indicative of wanton cruelty. After receiving parole in 2008, defendant, in 2009, sprayed pepper spray at a pregnant employee of a gas station in order to steal a bag of money. In 2010, he accrued a drug offense, for which he was on probation when he accrued the present case. In 2012, defendant not only committed the two armed robberies for which he faced sentencing, but the court also determined he sexually assaulted Dana M., who became pregnant as a result of the assault. Given defendant's criminal history, propensity for violence, and the need to deter the dangerous, violent offense of armed robbery, we cannot say the court abused its discretion by sentencing defendant to the maximum extended-term sentence in this case. Accordingly, defendant has failed to demonstrate a clear or obvious error to support his contention of plain error.

¶ 103 III. CONCLUSION

¶ 104 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we grant the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2012).

¶ 105 Affirmed.