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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellee,)	
)	
v.)	No. 13CR17705
)	
VICTOR JONES,)	
)	The Honorable
Defendant-Appellant.)	Nicholas R. Ford,
)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Mason and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held:* defendant's conviction for armed robbery with a dangerous weapon other than a firearm affirmed where the circuit court properly denied his pretrial motion to suppress and where the State presented sufficient evidence to establish his guilt beyond a reasonable doubt. Defendant's 16-year sentence affirmed where it was neither excessive nor disproportionate.

¶ 2 Following a joint bench trial, defendant Victor Jones and codefendant Martrell Holmes,¹ were convicted of armed robbery with a dangerous weapon other than a firearm. Defendant was

¹ Co-defendant Martrell Holmes is not a party to the instant appeal. This court disposed of Holmes's separate appeal and affirmed his conviction in a recent unpublished order entered in

sentenced to 16-years' imprisonment. On appeal, defendant challenges his conviction and the sentence imposed thereon, arguing: (1) the court erred in denying his pretrial motion to suppress; (2) the State failed to prove his guilt beyond a reasonable doubt; and (3) his 16-year sentence is excessive and disproportionate to the nature of the offense at issue. For the reasons set forth herein, we affirm the judgment of the circuit court.

¶ 3

BACKGROUND

¶ 4

On the evening of July 22, 2013, three individuals—Shantrell Suggs, Ann Armstrong, Dawon Lee—were approached by two armed men and were ordered to turn over their belongings. A police investigation subsequently ensued, and after defendant and codefendant Holmes were identified by the victims as the offenders, they were both arrested and charged with multiple crimes in connection with those events, including: armed robbery while armed with a firearm; armed robbery while armed with a dangerous weapon other than a firearm; attempted armed robbery; and unlawful restraint.

¶ 5

Suppression Proceedings

¶ 6

Prior to trial, defendant filed a motion to suppress the victims' pretrial identification, alleging that the identification procedures utilized by the police officers investigating the robberies was "improperly suggest[ive]" and "contributed to the mistaken identification of [defendant] as the perpetrator in this case." Given that the photo arrays and lineup viewed by the victims improperly suggested that he was the offender, defendant sought suppression of the victim's pretrial and in-court identifications of him. Codefendant Holmes was "add[ed]" to defendant's motion to suppress and the circuit court subsequently presided over a joint hearing on the motion.

accordance with Illinois Supreme Court Rule 23: *People v. Holmes*, 2018 IL App (1st) 160499-U.

¶ 7 At the hearing, Chicago Police Detective Modelski testified that he was assigned to investigate the robberies that occurred on the evening of July 22, 2013. The suspects had been described as “[t]wo male blacks, approximately 5’8,” approximately 120 pounds, approximately 18 to 20 years old, black hair.” The victims’ initial descriptions did not contain any reference to tattoos. During the course of Detective Modelski’s investigation, he showed photo arrays to Armstrong and Suggs. Armstrong viewed an array on July 24, 2013. Codefendant Holmes’ picture was included in that array and Armstrong identified him as one of the offenders. Defendant’s picture was not included in the array shown to Armstrong because he was not yet identified as a potential suspect of the crime at that time. Defendant did not become a suspect in the crime until Suggs provided information to police that led them to suspect his involvement. The photo array that Suggs observed on August 10, 2013, included pictures of both defendant and Holmes. Upon viewing that array, Suggs identified both defendant and Holmes as the offenders.

¶ 8 Thereafter, a lineup was conducted at the 15th District police station on August 13, 2013. The lineup was comprised of five participants, including defendant and Holmes. Both men were included in the lineup because “other officers working on the case obtained information which led them to believe that they were suspects in this crime.” Neither Armstrong nor Suggs had seen pictures of any of the other men included in the lineup; rather, defendant and Holmes were the only members of the lineup whose pictures had been previously shown to the victims. Lee had not been shown a photo array before viewing the physical lineup on August 13, 2013. Detective Holmes testified that the other participants included in the lineup were chosen because they bore a “similar physical composition” to both defendants. He acknowledged, however, that defendant and Holmes both have visible “matching” star tattoos on their necks and that none of

the other participants included in the lineup had similar tattoos. Defendant and Holmes's neck tattoos were not covered up in any manner during the lineup, but Detective Modelski testified that there was "no reason" why no efforts were made to conceal their tattoos.

¶ 9 Although the three victims viewed the lineup on the same day, Detective Modelski explained that Lee, Armstrong, and Stubbs each signed lineup advisory forms and viewed the lineup separately. The victims were instructed that they were not required to make any identifications. Moreover, they were not informed that there were two possible offenders included in the lineup. Lee was the first individual to view the lineup and he identified defendant as one of the offenders. He did not identify codefendant Holmes. Armstrong was the next victim to view the lineup. She, like Lee, only identified defendant from the lineup;² she did not identify codefendant Holmes. Suggs was the last individual to view the lineup and she identified both defendant and Holmes as the perpetrators of the crime.

¶ 10 After hearing the aforementioned testimony and the arguments of the parties, the circuit court denied defendant and co-defendant Holmes's motions to suppress. The court explained its rationale as followed:

"The question before the Court is was there anything in the composition of the lineup or in the manner or mechanisms by which the lineups or photo arrays were conducted which would have le[d] to a misidentification such as to violate the due process under the Constitution of the United States.

In this circumstance[] it's freely acknowledged that the two offenders both have star tattoos on their neck, although one is much more prominent than the other. There's nothing in the record to support that could have been a way to misidentify the defendants.

² When Armstrong viewed the photo array, she identified Holmes as the gunman. Upon viewing the lineup, however, she identified defendant as the gunman.

I don't understand how that logical conclusion arrives. For example, two of the people in the lineup are wearing white shirts and dark pants, black jeans. That is just as conducive to misidentification or identification that would be unduly suggestive as the tattoos, and the way this society is constituted there's so much ink out there that you spend more time covering it than you do just letting it exist to be seen. *** I don't know that there are [enough] turtlenecks out there to cover all the tattoos of all the necks of all the citizens of Chicago. Certainly there's nothing in the manner that the lineup is conducted or in the conduct of the police officers which was unconstitutional. The motion to duly suppress identification is denied.”

¶ 11 Following the court's ruling on the motion to suppress, the cause proceeded to a joint bench trial.

¶ 12 Trial

¶ 13 At trial, Armstrong testified at approximately 8:42 p.m. on July 22, 2013, she was sitting on the front stoop of her apartment building located at 19 South Leamington Avenue with Lee, her boyfriend, waiting for their landlord to arrive to collect their rent. Armstrong was braiding her hair and talking to Lee when defendant and Holmes approached them. Defendant was armed with a “big black gun.” The gun appeared to be “metal” and looked “real.” Defendant pointed the gun at Armstrong and ordered: “Empty your mother-f***** pockets.” She estimated that defendant was standing approximately one foot away from her when he did so. In response, Armstrong and Lee stood up. Defendant then reached into Lee's pocket while Holmes “snatched” Armstrong's cell phone, which was covered by a protective case. A money order containing Armstrong's \$650 rent payment was tucked inside of her cell phone case. Defendant and Holmes then fled the scene.

¶ 14 Armstrong spoke to police officers about the crime when they arrived on scene. Thereafter, on July 24, 2013, she was transported to the police station to view a photo array. Prior to viewing the array, Armstrong was informed that pictures of the offenders were not necessarily included in the array and that she was not required to identify anyone. She signed an advisory form acknowledging her understanding of these limiting instructions. Upon viewing the photo array, Armstrong identified Holmes as the man who took her cell phone and money order. Thereafter, on August 13, 2013, Armstrong viewed a physical lineup. Prior to viewing the lineup, Holmes was again admonished that the offenders were not necessarily included in the lineup and that she was not required to make a positive identification. She signed another advisory form acknowledging her understanding of those principles. Armstrong identified defendant and Holmes, who were both included in the physical lineup, as the offenders.

¶ 15 On cross-examination, Armstrong acknowledged that defendant and Holmes were both strangers to her and that she had not seen either man before the crime. She also acknowledged that Holmes had been using a shirt to cover most of his face during the offense. Only Holmes's eyes were visible as his nose, mouth, and neck were covered by his shirt.

¶ 16 Lee confirmed that he and Armstrong were sitting on the steps of their apartment building on the evening of July 22, 2013, waiting for their landlord to arrive so they could pay their rent when defendant walked up to them with a gun and ordered: "MF, empty your pocket." Defendant stood "about two feet" away from them and pointed the gun directly at Armstrong, who was "petrified." In response, Lee stood up and raised his hands in the air. Lee described defendant's gun as a black 9-millimeter semiautomatic handgun. At that point, "another guy" walked up to them, put his hands in Armstrong's pocket, and took her money and her phone. The second man then put his hand into Lee's pocket, however, Lee did not have any money or

valuables on his person and the man was unable to steal anything from him. Lee testified that he was unable to describe the second man because the man was using a shirt to cover part of his face “like how the Taliban does it.” That is, only the man’s eyes were visible. Defendant and the second man then “ran off” down the street. Armstrong immediately called the police and Lee spoke to the officers who arrived in response to her call. Lee described defendant as “short, light brown, [with a] pointed star [tattoo] on his neck.” Lee also saw a tattoo on the second man, but did not recall whether he informed the police of his observation. Defendant had been wearing shorts, but no shirt. Thereafter, on August 13, 2013, Lee viewed a physical lineup. Prior to viewing that lineup, Lee was told that he was not required to make any identifications and that there was no guarantee that any of the offenders were included in the lineup. After signing a lineup advisory form acknowledging his understanding of those principles, Lee viewed the lineup and identified defendant as “the guy that had the gun.”

¶ 17 Suggs testified at approximately 8:40 p.m. on July 22, 2013, she was walking home with her cousin after shopping at a neighborhood store. When she reached the area of 10 South Leamington, a man approached her from behind and ordered: “give me your s****.” In response to the demand, Suggs looked over her shoulder to see who was speaking to her. When she did so, Suggs saw Holmes, who was using a shirt to cover the lower half of his face. She observed that he was holding a gun. She acknowledged that she was not familiar with guns and could only describe the gun as “black.” Holmes then reached over and “snatched” her cell phone and \$50 from her jacket pocket. Defendant accompanied Holmes, but walked past her, stating, “I’m not going to rob no B****” and went to “rob[] the other two people.” Defendant had a “low fade” haircut and was wearing Rods jeans with a Louis Vuitton belt. He was not wearing a shirt;

rather, he like Holmes, was using a shirt to cover the lower part of his face. Defendant was also carrying a gun.

¶ 18 Suggs confirmed that she knew Holmes prior to this incident as someone who was from her neighborhood. She knew his first name “Martrell.” Although she did not have a close relationship with Holmes, Suggs testified that they “never got into it” and were “mostly friendly.” In contrast, Suggs admitted that she had not seen defendant prior to that evening. She, did, however, see defendant at a gas station located at the corner at Madison and Leamington approximately two days after the incident.

¶ 19 Suggs spoke to police who responded to the crime. Although she recalled providing the officers with a physical description of defendant, she did not recall the specific details she provided to police other than her observation that defendant, like Holmes, had a star tattoo on his neck. Thereafter, on August 10, 2013, Suggs was called upon to view a photo array. She was admonished that she was not required to make a positive identification and that pictures of the offenders were not necessarily included in the array. Upon viewing the array, Suggs identified defendant and Holmes as the offenders. Thereafter, on August 13, 2013, Suggs viewed a physical lineup. She was again admonished that she was not required to make any identifications and that the offenders were not necessarily included in the lineup. She again identified defendant and Holmes as the offenders. Suggs acknowledged that defendant and Holmes’s star tattoos were visible in the photo array³ and the physical lineup. She further acknowledged that none of the other men included in the photo array and lineup had such tattoos. She testified, however, that those tattoos had become common in her neighborhood.

³ After reviewing the exhibits included in the record, we note that defendant’s and Holmes’s neck tattoos are not actually visible in the pictures of them that were included in the photo array shown to Suggs; however, their tattoos are visible in the picture taken of the physical lineup.

¶ 20 Thereafter, the State presented the stipulated testimony of Officer Murphy. Pursuant to the stipulation, Officer Murphy would testify that the photo array that was shown to Armstrong included Holmes’s photograph, but did not include a photograph of defendant. Defendant’s picture was not included in the array because he had not yet been identified as a possible suspect in the crime at the time that Armstrong was shown the array.

¶ 21 Upon presenting the aforementioned evidence, the State rested its case-in-chief. Defense counsel subsequently requested a directed finding, arguing that the State had failed to meet its burden of proof in the matter. The motion was denied. Thereafter, both defendants presented a stipulation that the descriptions of the offenders that the victims provided to police officers did not contain any mention of star tattoos or any other tattoos. Thereafter, defense counsel offered demonstrative evidence and had defendant remove his shirt to show “the Court what he looks like with his shirt off.” When defendant did so, the trial judge noted that he observed a star tattoo on defendant’s neck, as well as other tattoos by his ear, collar bone, left wrist, and left arm. At Holmes’s attorney’s request, the court also observed Holmes and noted that he had the “same [star] neck tattoo” as defendant. Thereafter, the court accepted defendant’s and codefendant’s decisions not to testify. No further evidence was presented and the court continued the matter so that it could review all of the pretrial and trial the transcripts before delivering its verdict.

¶ 22 When the court reconvened, the parties delivered closing statements. The court then rendered its verdict. Initially, the court found that the State failed to prove that either defendant was armed with a loaded firearm, and acquitted both defendants of armed robbery with a firearm. Defendant and Holmes were also acquitted of the attempted armed robbery of Lee and aggravated unlawful restraint. The court, however, found defendant and Holmes guilty of the armed robbery of Armstrong with a dangerous weapon other than a firearm, specifically a

bludgeon. The court also found Holmes guilty of the armed robbery of Suggs, but found defendant not guilty of the same charge because he “disengaged” from that offense when he told Holmes that he did not rob “b*****.” The court explained that its ruling was “predicated on [its] observations of those witnesses and [its] judgment with regards to the relative credibility of these individuals” and its conclusion that “all the State’s witnesses were fairly strong witnesses.” Based on the witness’s testimony, the court stated that it was “very clear” that the two men who were responsible for the July 22, 2013, events were defendant and Holmes.

¶ 23 Defendant’s posttrial motion was denied the cause proceeded to a sentencing hearing. At the hearing, the court heard evidence in aggravation and mitigation. Specifically, the court was provided with information about defendant’s criminal background, his history of bipolar disorder with depressive features, and his history of refusing psychotropic medication. The court was also presented with evidence about defendant’s educational efforts and his supportive family. After considering the evidence presented, the court sentenced defendant to 16-years’ imprisonment, which was “within the middle range of sentencing option[s] available.” Holmes, in turn, received a 10-year sentence at a separate sentencing hearing.

¶ 24 This appeal followed.

¶ 25 ANALYSIS

¶ 26 Motion to Suppress⁴

¶ 27 On appeal, defendant challenges the circuit court’s denial of his pretrial motion to suppress the identifications made by Armstrong, Lee, and Suggs. He argues that the techniques utilized by police officers were “unduly suggestive” thereby warranting the suppression of the witnesses’ pretrial identifications.

⁴ We note that we will address the arguments raised by defendant in a different order than they are presented in his appellate brief.

¶ 28 The State responds that the circuit court’s finding that the pretrial identification procedures utilized by police officers were not unduly suggestive is not against the manifest weight of the evidence and that the court properly denied defendant’s motion to suppress.

¶ 29 As a general rule, a circuit court’s ruling on a motion to suppress is subject to a bifurcated two-prong standard of review. *Ornelas v. United States*, 517 U.S. 690, 699 (1996); *People v. Johnson*, 237 Ill. 2d 81, 88 (2010). Pursuant to this standard, a reviewing court will afford great deference to the circuit court’s factual findings and will disregard those findings only where they are against the manifest weight of the evidence. *Johnson*, 237 Ill. 2d at 88; *People v. Lopez*, 2013 IL App (1st) 111819, ¶ 17. The circuit court’s ultimate legal finding as to whether suppression is warranted, however, is subject to *de novo* review. *People v. Colyar*, 2013 IL 111835, ¶ 31; *People v. Bartelt*, 241 Ill. 2d 217, 234 (2011). Accordingly, “[a] court of review ‘remains free to engage in its own assessment of the facts in relation to the issues presented and may draw its own conclusions when deciding what relief should be granted.’ ” *People v. Gherna*, 203 Ill. 2d 165, 175-76 (2003) (quoting *People v. Crane*, 195 Ill. 2d 42, 51 (2001)). When conducting this analysis, a reviewing court may consider the evidence presented at trial in addition to the evidence presented during the prior suppression hearing. *People v. Almond*, 2015 IL 113817, ¶ 55.

¶ 30 A defendant challenging the propriety of a pretrial identification procedure bears the burden of proving that the procedure was unduly suggestive. *People v. Brooks*, 187 Ill. 2d 91, 126 (1999). Specifically, the defendant must prove that the identification procedure was “so unnecessarily suggestive and conducive to irreparable misidentification that the defendant was denied due process of law.” *People v. Ramos*, 339 Ill. App. 3d 891, 897 (2003). Indeed, “[o]nly where a pretrial encounter resulting in an identification is ‘unnecessarily suggestive’ or

‘impermissibly suggestive’ so as to produce “a very substantial likelihood of irreparable misidentification” is evidence of that and any subsequent identification excluded by law under the due process clause of the 14th amendment.’ ” *People v. Gabriel*, 398 Ill. App. 3d 332, 348 (2010) (quoting *People v. Love*, 377 Ill. App. 3d 306 (2007) (quoting *People v. Moore*, 266 Ill. App. 3d 791, 796-97 (1994)). When addressing a defendant’s challenge to a pretrial identification procedure, courts look at the strength of suggestion made to the witnesses through some “specific activity” on the part of the police which places a “spotlight” on an individual. *Gabriel*, 398 Ill. App. 3d at 349 (citing *People v. Johnson*, 149 Ill. 2d 118, 147 (1992)). Ultimately, when reviewing a claim challenging the suggestibility of an identification procedure, the court must consider the totality of the circumstances. *Johnson*, 149 Ill. 2d at 147; *People v. Lawson*, 2015 IL App (1st) 120751, ¶ 39. The circuit court’s factual determination that an identification procedure was not unduly suggestive should not be disturbed unless it is against the manifest weight of the evidence. *Lawson*, 2015 IL App (1st) 120751, ¶ 39.

¶ 31 Defendant first challenges the suggestibility of the photo array shown to Suggs. He takes issue with the fact that his picture and Holmes’s picture were both included in the same photo array as well as the fact that only four “filler” photos were included in that array. In support, he points to section 107A-2 of the Illinois Code of Civil Procedure of 1963, the statute recently enacted by the Illinois legislature that governs identification procedures. 725 ILCS 5/107A-2 (West 2016). That statute, which went into effect on January 1, 2015, sets forth standards and protocols to be utilized by law enforcement officers during their investigative identification endeavors and mandates that only one suspected perpetrator may be included in a given lineup (725 ILCS 5/107A-2(f)(3)(A) (West 2016)), that at least five fillers be included in a photo array (725 ILCS 5/107A-2(f)(3)(C) (West 2016)), and that the suspected perpetrator be placed in a

different position in a physical lineup or photo array for each eyewitness called upon to make an identification (725 ILCS 5/107A-2(f)(4) (West 2016)). Although there is no dispute that the identification procedures employed in the instant case did not comport with some of the aforementioned statute's mandates, the statute was not in effect when the witnesses in this case were shown photo arrays and viewed lineups in 2013. Given that the statute did not govern the lineup procedures utilized in this case, it does not inform our review of defendant's challenge to the propriety of those procedures. See *People v. Moore*, 2015 IL App (1st) 141451, ¶ 21, *overruled on other grounds by People v. Hardman*, 2017 IL 121453.

¶ 32 Furthermore, our review of the record reveals that the trial court's determination that the identification techniques utilized in this case were not unduly suggestive is not against the manifest weight of the evidence. First, nothing in the record indicates that the photo array shown to Suggs was suggestive. The photos are all the same size and possess similar clarity. In addition, all of the men in the photo array appear to be in the same age range and possess similar complexions, eye colors, very similar thin moustaches, and nearly identical short hairstyles. No tattoos are visible in any of the pictures.

¶ 33 Similarly, nothing in the record indicates that the lineup, comprised of defendant, Holmes, and three fillers, that was viewed by all three of the victims, was suggestive. Although defendant and Holmes were the only members of the lineup whose pictures were included in prior photo arrays, we note that identification procedures are not rendered automatically improper based solely on the fact that a witness has been shown a defendant's picture prior to viewing a lineup. See *Johnson*, 149 Ill 2d at 148; *People v. Price*, 362 Ill. App. 3d 762, 772 (2005). Photographs of the lineup show all of the men seated with their hands together in front of them. The men appear to be of similar age, height, and weight. In addition, the men are all

similarly dressed in pants and shirts. The men also possess similar complexions and four of the five men have nearly identical short hairstyles. Although one of the men's hair is fashioned in braids or dreadlocks, his other physical characteristics are similar to the other lineup participants. We note that "[t]he law does not require that lineups and photographic arrays shown to a witness include near identical or look alike of the witness's descriptions." *Gabriel*, 398 Ill. App. 3d at 348; see also *Johnson*, 149 Ill. 2d at 147 ("That some [of the lineup participants] may be dressed differently, or fail to have one or more of the characteristics described by the witnesses is relevant only within the context of the totality of the circumstances"). Finally, we note that three of the men, including defendant and Holmes, have visible tattoos. Although defendant and Holmes's star tattoos are visible on their necks, we disagree that the visibility of their tattoos rendered the lineup unduly suggestive. Importantly, there is no evidence that police made any efforts to "spotlight" the tattoos. In addition, there is no evidence that any of the victims identified defendant solely because of his neck tattoo. Notably, none of the victims mentioned tattoos in their descriptions of the offenders. Moreover, Suggs testified at trial that such tattoos had become common in the neighborhood and were thus not unique identifying features. Although it is true that each of the witnesses viewed the same lineup on the same day, we note that the three witnesses viewed the lineup separately, one at a time, and were not allowed to speak to each other. In addition, all three witnesses were advised that the offenders may or may not be in the lineup, that they were not required to identify anyone, and that the police officers did not necessarily know who the offenders were.

¶ 34 Ultimately, we reiterate that the burden of proving a denial of due process through identification procedures is on the defendant. *Brooks*, 187 Ill. 2d at 126; *Johnson*, 149 Ill. 2d 148. Following our review of the record, we are unable to conclude the trial court's

determination that defendant failed to meet his burden of showing that identification procedures utilized in this case were unduly suggestive is against the manifest weight of the evidence. Rather, we conclude that the circuit court properly denied defendant's motion to suppress the identification testimony.

¶ 35 Sufficiency of the Evidence

¶ 36 Defendant also challenges the sufficiency of the evidence. He argues that the victims' identifications were "inherently unreliable and insufficient to prove that he was involved in the robbery." Alternatively, he argues that the State "did not present enough evidence to prove beyond a reasonable doubt that the object seen by the complainants was actually dangerous or capable of being used in a dangerous manner" and that his aggravated robbery conviction should be reduced to simple robbery.

¶ 37 Due process requires proof beyond a reasonable doubt to convict a criminal defendant. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). In reviewing a challenge to the sufficiency of the evidence, it is not a reviewing court's role to retry the defendant; rather, the court must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found each of the essential elements of the crime beyond a reasonable doubt. *People v. Ward*, 215 Ill. 2d 317, 322 (2005); *People v. Joiner*, 2018 IL App (1st) 150343, ¶ 58; *People v. Hayashi*, 386 Ill. App. 3d 113, 122 (2008). This standard is applicable to all criminal cases regardless of the nature of the evidence at issue. *People v. Bush*, 214 Ill. 2d 318, 327 (2005). In a bench trial, the trial court is responsible for evaluating the credibility of the witnesses, resolving conflicts and inconsistencies in the evidence, and determining the weight to afford, and the inferences to be drawn, from the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). A reviewing court may not substitute its judgment for that of the trier of fact on

such matters (*People v. Campbell*, 146 Ill. 2d 363, 375 (1992)) and will not reverse a defendant's conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt. *People v. Bradford*, 2016 IL 118674, ¶ 12.

¶ 38 In order to sustain a criminal conviction, the State bears the burden of proving beyond a reasonable doubt the identity of the person who committed a crime. 720 ILCS 5/3-1 (West 2014); *People v. Slim*, 127 Ill. 2d 302, 307 (1989); *People v. Simmons*, 2016 IL App (1st) 131300, ¶ 88. Vague and doubtful identification testimony is insufficient to sustain a criminal conviction; however, the identification testimony of a single witness is sufficient to sustain a conviction if the witness viewed the accused under circumstances that allowed for a positive identification. *People v. Lewis*, 165 Ill. 2d 305, 356 (1995); *Slim*, 127 Ill. 2d at 307; *People v. Grady*, 398 Ill. App. 3d 332, 341 (2010). Ultimately, the reliability of a witness's identification testimony is a question for the trier of fact. *In re Keith C.*, 378 Ill. App. 3d 252, 258 (2007). In assessing the strength of a witness's identification testimony, courts employ the factors set forth by the United States Supreme Court in *Neil v. Biggers*, 409 U.S. 188, 93 S. Ct. 375, 34 L. Ed. 2d 401 (1972), and adopted by our supreme court in *Slim*, which include: (1) the opportunity the witness had to view the perpetrator at the time of the offense; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the offender; (4) the certainty of the witness's identification; and (5) the length of time between the offense and the witness's identification. *Lewis*, 165 Ill. 2d at 356; *Slim*, 127 Ill. 2d at 307-08. No one single factor is dispositive; rather, the fact finder should consider all five factors in assessing the reliability of identification testimony. *People v. Smith*, 2012 IL App (4th) 100901, ¶ 87. Ultimately, where, as here, a defendant's guilt and identity as the offender is dependent upon eyewitness testimony, the relevant inquiry on appeal is whether the circuit court could reasonably accept the eyewitness

identification testimony as true beyond a reasonable doubt. *People v. Williams*, 2015 IL App (1st) 131103, ¶ 69.

¶ 39 Turning to the first factor—the opportunity the witnesses had to view the perpetrator at the time of the offense—we find that the victims’ testimony demonstrated that they had sufficient opportunity to observe defendant during the armed robbery. When evaluating this factor, the key inquiry is “ ‘whether the witness was close enough to the accused for a sufficient period of time under conditions adequate for observation.’ ” *People v. Tomei*, 2013 IL App (1st) 112632, ¶ 40 (quoting *People v. Carlton*, 78 Ill. App. 3d 1098, 1105 (1979)). In this case, the evidence established that defendant was in close proximity to all of the victims during the robberies. Suggs recalled that defendant walked past her after codefendant “snatched” her cell phone and \$50. Lee, in turn, estimated that defendant was standing approximately two feet away from him when defendant ordered him and Armstrong to empty their pockets. Although defendant used a shirt to cover the lower half of his face during his interaction with Suggs, he made no such effort to conceal his face when he approached Lee and Armstrong. While defendant is correct that the robberies happened quickly, we observe that the mere brevity of a witness’s ability to view an offender does not render the witness’s subsequent identification so fraught with doubt that it creates reasonable doubt as to a defendant’s guilt. See, e.g., *People v. Herrett*, 137 Ill. 2d 195, 204 (1990) (finding that the witness had sufficient opportunity to view his assailant where the witness testified that he viewed the offender’s face for a “few seconds” in a dimly lit store); *People v. Negron*, 297 Ill. App. 3d 519, 530 (1998) (identification testimony sufficient even though the witnesses “did not have more than several seconds to identify their attackers”). After reviewing the testimony of Suggs, Lee, and Armstrong, we find that they were afforded sufficient opportunity to observe defendant during the crime.

¶ 40 With respect to the second factor—the witness’s degree of attention—we note that there is nothing in the record that suggests that the victims’ attention was unduly compromised during the armed robbery. Although defendant argues that “the fact that they were being robbed with what appeared to be a gun created a highly stressful situation that interfered with their ability to make an accurate identification,” we note that the frightening nature of such an encounter does not necessarily decrease a witness’s degree of attention or his or her powers of observation. See, e.g., *People v. Robinson*, 206 Ill. App. 3d 1046, 1052 (1990) (“Excitement, rather than detract from an identification, could increase the powers to observe”). Ultimately, there is nothing in the record to suggest that the degree of attention that Suggs, Lee, and Armstrong paid to the offenders during the course of the armed robbery was insufficient to allow them to positively identify defendant as one of the perpetrators.

¶ 41 Turning to the third factor, the accuracy of the witnesses’ prior descriptions of the offenders, there is no dispute that the victims were not able to provide very detailed descriptions of defendant. At the suppression hearing, Detective Modelski testified that the description of the two offenders given to police was “[t]wo male blacks, approximately 5’8”, approximately 120 pounds, approximately 18 to 20 years old, black hair.” The descriptions did not include any mention of tattoos. Based on the record, defendant is a dark skinned African American male who is 5’9” tall and weighs 150 pounds. He was 23 years old at the time of the offense and had short hair and tattoos on his neck, lower left arm, and left wrist. Although we acknowledge the lack of detail and accuracy in the victims’ descriptions of the offenders, we disagree that the flaws in their descriptions are necessarily fatal to their identification testimony. See *People v. Williams*, 221 Ill. App. 3d 1061 (1991) (“Where the witness makes a positive identification, precise accuracy in the preliminary description is not necessary. [Citations]. This is true even

where there are discrepancies or inaccuracies as to height and weight”). We note that courts have consistently recognized that vague or discrepant descriptions do not necessarily render identifications unreliable because very few witnesses are trained to be keen observers. See, e.g., *People v. Williams*, 118 Ill. 2d 407, 413-14 (1987) (witness’s failure to mention the defendant’s mustache and facial hair did not render her identification unreliable); *People v. Nims*, 156 Ill. App. 3d 115, 121 (1986) (victim’s failure to mention the defendant’s facial scars did not render her identification unreliable); see also *People v. Bias*, 131 Ill. App. 3d 98, 104-05 (1985) (recognizing that inaccuracies pertaining to the “presence or absence of a beard, mustache, or tattoo, whether the assailant had missing teeth, and the assailant’s height, weight and complexion do not render an identification utterly inadmissible” and unreliable). In doing so, courts have emphasized that “ ‘[t]he credibility of an identification does not rest upon the type of facial description or other physical features which the complaining witness is able to relate. *** It depends rather upon whether the witness had a full and adequate opportunity to observe the defendant.’ ” *People v. Robinson*, 206 Ill. App. 3d 1046, 1051 (1991), quoting *People v. Witherspoon*, 33 Ill. App. 3d 12, 19-20 (1975). Here, we are unable to conclude that the descriptions offered by the State’s witnesses automatically invalidated their subsequent positive identifications of defendant.

¶ 42 The fourth factor pertains to the degree of certainty the witnesses displayed in identifying defendant. There is no dispute that Suggs, Lee, and Armstrong each positively identified defendant as one of the offenders at trial. They also evidenced certainty when they identified defendant as the offender when they viewed a five-person physical lineup. Moreover, Suggs also identified defendant when shown a photo array.

¶ 43 Turning to the fifth and final factor—the length of time between the crime and the identification—we note that the crime occurred on July 22, 2013. Suggs identified defendant from a photo array on August 10, 2013, less than one month after the crime. In addition, each of the victims identified defendant from a physical lineup on August 13, 2013. The pretrial identifications were thus made within a relatively short period time after the crime. Indeed, we observe that courts have upheld identifications made after considerably longer lapses in time following the crime. See *People v. Rodgers*, 53 Ill. 2d 207, 214 (1972) (identification made two years after the crime); *People v. Dean*, 156 Ill. App. 3d 344, 352 (1987) (identification made 2 ½ years after the crime).

¶ 44 Ultimately, we reiterate that the reliability of a witness’s identification of a defendant is a matter for the trier of fact (*In re Keith C.*, 378 Ill. App. 3d at 258) and that the testimony of a single credible witness who makes a positive identification is sufficient to sustain a criminal conviction (*People v. Barnes*, 364 Ill. App. 3d 888, 895 (2006)). The trial court expressly found that “all the State’s witnesses were fairly strong witnesses” and that it was “very clear” that defendant and Holmes were the two men responsible for the armed robberies in this case. After reviewing the relevant factors, we find no reason to disturb that determination; rather, we conclude that a reasonable trier of fact could have found that the testimony of Suggs, Lee, and Armstrong was sufficient to establish defendant’s identity as the offender.

¶ 45 Alternatively, defendant suggests that the State failed to prove that the gun at issue was a dangerous weapon within the meaning of the armed robbery statute and that his conviction should be reduced to simple robbery.

¶ 46 Defendant is correct that in order to obtain a conviction for the offense of armed robbery in the instant case, the State was required prove that he committed the offense of robbery while

armed with a dangerous weapon other than a firearm. 720 ILCS 5/18-2(a)(1) (West 2014); see also *People v. Lampton*, 385 Ill. App. 3d 507, 512 (2008) (explaining that “[t]he presence of a dangerous weapon is the extra ingredient that changes a robbery into an armed robbery and must be proved beyond a reasonable doubt”). The term “dangerous weapon” is not defined by the armed robbery statute (*People v. Hernandez*, 2016 IL 118672, ¶ 120), but it has been broadly construed to include “any object sufficiently susceptible to use in a manner likely to cause serious injury” (*People v. Ligon*, 2016 IL 118023, ¶ 22). This definition encompasses objects that are dangerous *per se*, such as knives and loaded guns, as well as objects that are or may be used in a dangerous manner. *People v. Ross*, 229 Ill. 2d 255, 273-76 (2008); *People v. Curry*, 2018 IL App (1st) 153635, ¶ 16. Accordingly, the State can prove that a gun involved in the offense was a dangerous weapon either by presenting evidence that the gun was operable and loaded or by presenting evidence that the gun was used, or was capable of being used, as a bludgeon due to its size and weight. *Ross*, 229 Ill. 2d at 276; see also *People v. Skelton*, 83 Ill. 2d at 63-64 (recognizing that “a weapon can be dangerous, even though used in a manner for which it was not designed or intended. Thus, a rifle or shotgun, whether loaded or not, may be used as a club with devastating effect. Similarly, a handgun, when gripped by the barrel and used as a bludgeon, is equally dangerous whether loaded or unloaded”). Where the gun at issue is not recovered and introduced into evidence at trial, eyewitness testimony detailing the physical characteristics of the gun, including the gun’s size, weight, and composition, may be sufficient to establish that the gun brandished by the defendant during the crime was capable of being used as a bludgeon. See generally *Ross*, 229 Ill. 2d at 277. Ultimately, whether an object is sufficiently susceptible to use in a manner likely to cause serious injury such that it qualifies as a dangerous weapon for purposes of the armed robbery statute is generally a question of fact. *Hernandez*,

2016 IL 118672, ¶ 12; see also *People v. Dwyer*, 324 Ill. 363, 365 (1927) (recognizing that “when the character of the weapon is doubtful or depends upon the manner of its use, it is a question for the [fact finder] to determine from a description of the weapon, from the manner of its use, and the circumstances of the case”).

¶ 47 Here, we find that the evidence, when viewed in the light most favorable to the State, was sufficient for the circuit court to conclude that defendant was armed with a dangerous weapon, specifically a bludgeon. All three victims testified that defendant was armed with a gun. Lee, who expressed familiarity with firearms, specifically described the weapon as a black 9-millimeter semiautomatic handgun. Armstrong, in turn, described the weapon as “big black gun.” Although she was admittedly unfamiliar with firearms, Armstrong testified that the gun appeared to be made of “metal” and looked “real.” While there was no evidence that the gun was loaded and dangerous *per se*, the victims’ testimony concerning the physical characteristics of the gun at issue, including its metallic nature, was sufficient to allow the circuit court to conclude that the gun was capable of being used as a bludgeon. We therefore affirm defendant’s conviction for armed robbery with a dangerous weapon other than a firearm.

¶ 48 Sentence

¶ 49 Finally, defendant challenges his sentence. He argues that the 16-year sentence imposed upon him by the circuit court is “excessive, disproportionate, and disparate where it did not reflect the seriousness of his offense and his rehabilitation potential and where it varied from Holmes’s [10-year] sentence.”

¶ 50 The State responds that defendant’s sentence does not constitute an abuse of discretion. The State emphasizes that the “16-year sentence was within the prescribed statutory range for the

Class X conviction of armed robbery” and that the “trial court properly considered all relevant factors” prior to sentencing defendant.

¶ 51 As a threshold matter, defendant concedes that he failed to properly preserve this issue for appellate review because trial counsel did not file a motion to reconsider his sentence. See *People v. Hillier*, 237 Ill. 2d 539, 545 (2010) (recognizing that “[i]t 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”). In an effort to avoid forfeiture, however, defendant invokes the plain error doctrine, which provides a limited exception to the forfeiture rule, and allows for review of forfeited sentencing issues on appeal if the evidence at the sentencing hearing was closely balanced or if the claimed error is of such a serious magnitude that it affected the integrity of the judicial process and deprived the defendant of his right to a fair sentencing hearing. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967); *Hillier*, 237 Ill. 2d at 545. Given that “[t]he right to be lawfully sentenced is a substantial right,” sentencing claims may be reviewed for plain error. *People v. Whitney*, 297 Ill. App. 3d 965, 967 (1998). The first step in any plain error analysis is to determine whether any error actually occurred. *Hillier*, 237 Ill. 2d at 545. If an error is discovered, the defendant then bears the burden of persuasion to show that the error prejudiced him under either prong. *Id.* Keeping this standard in mind, we turn now to evaluate the merit of defendant’s claim.

¶ 52 The Illinois Constitution requires a trial court to impose a sentence that achieves a balance between the seriousness of the offense and the defendant’s rehabilitative potential. Ill. Const. 1970, art. I, §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." *People v. Maldonado*, 240 Ill. App. 3d 470, 485-86 (1992). The court, however, need not explicitly analyze each relevant factor or articulate the basis for the sentence imposed, and when mitigating evidence is presented before the trial court, it is presumed that the court considered that evidence when imposing the defendant's sentence. *People v. Averett*, 381 Ill. App. 3d 1001, 1021 (2008); *People v. Ramos*, 353 Ill. App. 3d 133, 137 (2004). Because the trial court is in the best position to weigh these factors, the sentence that the trial court imposes is entitled to great deference and will not be reversed absent an abuse of discretion. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000); *People v. Lee*, 379 Ill. App. 3d 533, 539 (2008). Indeed, a reviewing court will not reweigh the factors in reviewing a defendant's sentence and may not substitute its judgment for the trial court merely because it could or would have weighed the factors differently. *People v. Jones*, 376 Ill. App. 3d 372, 394 (2007). Ultimately, when a sentence falls within the 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. *People v. Snyder*, 2011 IL 111382, ¶ 36; *People v. Gutierrez*, 402 Ill. App. 3d 866, 900 (2010); *Ramos*, 353 Ill. App. 3d at 137.

¶ 53 As discussed previously, defendant was convicted of armed robbery with a dangerous weapon other than a firearm, a class X felony (720 IL 5/18-2(a)(2), (b) (West 2012)), and was thus subject to "a determinate sentence of not less than 6 years and not more than 30 years" imprisonment (730 ILCS 5/5-4.5-25 (West 2012)). Accordingly, the 16-year sentence imposed upon him by the circuit court falls within the permissible statutory range, and it thus presumed proper. *Gutierrez*, 402 Ill. App. 3d at 900; *Ramos*, 353 Ill. App. 3d at 137.

¶ 54 Although defendant's sentence falls squarely within the prescribed statutory range, he argues that his sentence is "excessive" and "disproportionate to the offense he committed." He further suggests that the sentence failed to account for the relevant mitigating evidence, including his rehabilitative potential, which was presented at his sentencing hearing. The record, however, clearly demonstrates that the court heard and considered mitigating evidence as well as the nature of the crime when imposing defendant's sentence. At the sentencing hearing, the State highlighted the defendant's "long history of criminal conduct" that commenced when he was a juvenile, including a previous aggravated robbery conviction. Given defendant's repeated failure to change his behavior, the State requested the court to impose a sentence "in the upper range of the six to thirty required by the class X" sentencing statute. Defense counsel, in turn, emphasized his client's mental health issues, which he identified as the root of his "negative behavior." Counsel, noted however, that despite his client's prior mental health problems and criminal background, defendant took efforts to further his education while incarcerated, earning his GED. Counsel also emphasized that defendant had a supportive family and noted that his mother was present "at every court date." Defendant's grandmother also spoke out on her grandson's behalf, acknowledging his mental health issues, but emphasizing his "good heart." After hearing the aforementioned evidence, the court explained the rationale behind its sentencing decision as follows:

"I'm going to take into account the evidence presented at trial, the evidence in aggravation and mitigation put in, and lastly I heard from defendant's grandmother, and certainly obviously the mitigation I heard from the attorney as well as the presentence investigation, arguments of the attorneys, the action of impact incarceration and the defendant's [allocution], such that it was.

In this circumstance I note that the defendant has confronted a mental health issue. It's not a mental health issue that would render him or has rendered him unfit to stand trial or unfit for sentencing. Obviously there is something here that is factoring into my sentencing, but I don't think any Judge can look at a person's background like this, that Mr. Jones has, and not be concerned about the fact that in 2008 he was sentenced to a period of six years in the Illinois Department of [Corrections] for aggravated robbery, a very similar case in part. I also want to note that despite the convictions, he arrived in front of me in December 2012, I think it was a narcotics case, and I chose to give him [t]he least onerous sentencing that was available to him. That's what I did then. I gave him Cook County boot camp. I really stretched my neck out for [defendant] and have him a semi-incarcerated state, and during the period of time he was in boot camp, he absented himself and was involved in this case, a very serious case.

Under these circumstances, the Court will sentence [defendant] to a period of 16 years in the Illinois Department of Corrections, plus three years mandatory supervised release.”

¶ 55 After reviewing the record, we find that defendant has failed to rebut the presumption of propriety afforded to his sentence. In doing so, we acknowledge that defendant received a longer sentence than his codefendant; however, we do not find the sentencing disparity in this case violates principles of fundamental fairness or warrants a finding of an abuse of discretion. It is well-settled that the mere existence of a sentencing disparity between codefendants, standing alone, does not violate fundamental fairness principles (*People v. Gordon*, 2016 IL App (1st) 134004, ¶ 58; *People v. Rodriguez*, 402 Ill. App. 3d 932, 939-940 (2010)); rather only arbitrary and unreasonable disparities in the sentences of similarly situated codefendants are generally

precluded (*People v. Moss*, 205 Ill. 2d 139, 171 (2001); *People v. Caballero*, 179 Ill. 2d 205, 216 (1997)). Courts have recognized that disparities in the sentences imposed on codefendants may be warranted based on differences in the nature and extent of their participation in the crime at issue, or by other relevant factors, including their respective characters, backgrounds, criminal histories, and potentials for rehabilitation. *Moss*, 205 Ill. 2d at 171; *People v. James*, 2017 IL App (1st) 143391, ¶ 159. Accordingly, when evaluating a challenge to a sentencing disparity between codefendants, it is not the disparity itself that controls; rather, it is the reason for the disparity that is crucial. *People v. Martinez*, 372 Ill. App. 3d 750, 760 (2007).

¶ 56 In this case, the court acknowledged that defendant’s 16-year sentence was “six years more than the co-defendant received,” but emphasized that “the co-defendant had a much less serious background.” The record expressly thus refutes defendant’s contention that the sentencing disparity with his codefendant was arbitrary and unreasonable. The court explicitly highlighted and identified defendant’s more extensive and more serious criminal history, including a prior conviction for a “similar” type of offense, as the reason for the sentencing disparity between the codefendants. A sentencing disparity is not improper based on such circumstances. See *Rodriguez*, 402 Ill. App. 3d at 940 (recognizing that a sentencing disparity between codefendants may be justified based on differences in their criminal records and their potentials for rehabilitation); *Martinez*, 372 Ill. App. 3d at 760 (recognizing that a sentencing disparity between codefendants may be justified when one has “a more serious criminal record”).

¶ 57 We are also unpersuaded by defendant’s reliance on pretrial plea negotiations to support his argument that the 16-year sentence the circuit court ultimately elected to impose is excessive. It is well-settled that “it is proper to grant dispositional concessions to defendants who plead guilty since the public interest in the effective administration of justice is served.” *People v.*

Gordon, 2016 IL App (1st) 134004, ¶ 60. When, however, a defendant rejects a plea deal with the accompanying dispositional concessions and is convicted following a trial, the circuit court is not bound by the sentence discussed during plea negotiations and may impose a more severe sentence as long as the more severe sentence is not imposed simply as a means to punish the defendant for exercising his constitutional right to be tried before an impartial judge or jury. *People v. Ward*, 113 Ill. 2d 516, 526 (1986); *People v. Moriarty*, 25 Ill. 2d 565, 567 (1962).

¶ 58 The record reveals that prior to trial, the State offered defendant a plea deal wherein he would plead guilty to two counts of armed robbery with a dangerous weapon in exchange for a sentence of 9 years' imprisonment. Defendant was admonished of the benefits of the deal as well as the inherent uncertainties associated with a trial, however, he ultimately elected to reject the State's proffered plea deal and proceed to trial. Although the sentence that defendant ultimately received was greater than the prison term discussed during plea negotiations, there is no evidence that the circuit court's decision to sentence defendant to 16-years' imprisonment was informed by a desire to punish defendant for failing to plead guilty.

¶ 59 Ultimately, having found no sentencing error, there can be no plain error. *People v. Bannister*, 232 Ill. 2d 52, 79 (2008). The lack of error is likewise fatal to defendant's alternative claim that his attorney's failure to file a postsentencing motion amounted to ineffective assistance of counsel. *Id.* at 80. Accordingly, defendant's 16-year sentence is affirmed.

¶ 60 CONCLUSION

¶ 61 The judgment of the circuit court is affirmed.

¶ 62 Affirmed.