2019 IL App (1st) 161972-U

SIXTH DIVISION
DECCEMBER 20, 2019

No. 1-16-1972

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 1631 (02)
	)	
LUIS VALDEZ,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Mikva and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's convictions and sentence are affirmed, as the State proved him guilty beyond a reasonable doubt of aggravated kidnapping and armed robbery, and his sentence of 22 years' imprisonment was not an abuse of discretion.

¶ 2 Following a bench trial in the circuit court of Cook County, the defendant-appellant, Luis Valdez, was convicted of aggravated kidnapping, armed robbery, aggravated battery, and mob action. The defendant was sentenced to 22 years' imprisonment. On appeal, the defendant contends that the State failed to prove him guilty of aggravated kidnapping and armed robbery, and that his sentence was excessive. For the following reasons, we affirm the judgment of the circuit court of

Cook County.

¶ 3 BACKGROUND

¶ 4 The State charged the defendant and his co-defendants, Ray Guereca, Gonzalo Guerrero, Elena Rios, and Jose Villalobos, with the aggravated kidnapping of Shaun Jurgens and Raymond Jerz; with first degree murder of Raymond Jerz; with armed robbery and aggravated battery of Shaun Jurgens; and with mob action. A simultaneous but severed bench trial of the defendant and co-defendants commenced, and the following evidence was presented.

¶ 5 On February 10, 2012, two friends, Raymond Jerz and Shaun Jurgens, attended a party in Chicago near 26th Street and Kedzie Avenue. Both Jerz and Jurgens lived in the suburbs, and a friend had driven them to the party in her car with some other friends. At the party, the driver's purse was stolen. Her car keys were in her purse and so the group had no way to get home. At approximately 3:00 a.m., Jerz and Jurgens walked to a nearby restaurant, Los Comales, while the rest of their friends waited at the party with the car. Inside the restaurant, Jerz and Jurgens ordered some food and sat down to eat. As they ate, they started making phone calls to try to find someone to give them a ride home.

¶ 6 Jurgens went into the restroom at Los Comales, where he encountered the defendant, along with two of the co-defendants, Ray Guereca and Jose Villalobos. Jurgens testified that the defendant and his friends were being "loud and obnoxious" and that he could tell they were "gang bangers." He was not scared of them, though. He believed they were members of the Satan Disciples street gang, or at least members of an affiliated and larger street gang, known as Folks. Jurgens had been a member of the Satan Disciples between the ages of 13 and 19. Although he was no longer a member of the Satan Disciples, he still had the six-point star and pitchfork tattoo

on his right leg which signified his prior membership.[1]

¶ 7 Jurgens approached the defendant, Guereca, and Villalobos and offered them $20 to drive him and his friends to the nearest train station so that they could get home. Jurgens, believing them to be members of the Satan Disciples or Folks street gang, displayed the tattoo on his leg. In response, the defendant and his friends told Jurgens: "Hey, it's cool, Folks. We'll help you out."

¶ 8 However, the defendant and his friends were only pretending to be members of the Satan Disciples or Folks street gang. They were actually members of the Latin Kings street gang, who are rivals of the Satan Disciples. And the Latin Kings street gang is a part of the larger gang faction known as the People Nations, who are rivals of the Folks street gang. Had Jurgens suspected that the defendant and his friends were members of the Latin Kings or People Nations, he "wouldn't have been talking to them."

¶ 9 All of the men exited the restroom. Jurgens told Jerz that the defendant and his group were going to pick up their other friends still at the party, and then give them all a ride to the train station. The group left Los Comales and entered a minivan behind the restaurant. Jerz and Jurgens shared the middle-row seat with the defendant and Villalobos. Guereca got in the driver's seat. Co-defendant Elena Rios was sitting in the passenger's seat. Two other women, Stephanie Del Rio and Tatiana Inovskis, were sitting in the backseat.

¶ 10 Del Rio testified that earlier in the night on February 10, 2012, Guereca picked her and Invoskis up in the van to take them to Rios' house. The defendant was also in the van; Del Rio had known him for approximately five years from school. After drinking at Rios' house for a while, the defendant, Del Rio, Rios, Invoskis, and Guereca left and drove around in the van for three

[1]The record reflects that Jerz had never been affiliated with any gangs.

hours. Villalobos joined the group at some point. At around 3:00 a.m., the group stopped at Los Comales to use the restroom. Guereca parked the van in the back parking lot, and everyone except for Invoskis went inside to use the restroom.

¶ 11 When everyone returned to the van, Jerz and Jurgens came back with the defendant, Guereca, and Villalobos. Del Rio had never seen either Jerz or Jurgens before. She also noticed that Guereca's hat was now titled to the right side, which was "unusual" because she knew he was a member of the Latin Kings, and Latin King members always tilt their hat to the left side. In fact, Guereca's hat had been tilted to the left when he entered Los Comales. Del Rio mentioned the direction of Guereca's hat to another man sitting next to her in the van, but the man pinched her, which she took to mean "calm down."[2]

¶ 12 When Guereca pulled out of the Los Comales parking lot, Jurgens noticed that he began driving the van in the opposite direction from 26th Street and Kedzie Avenue, where his other friends were waiting at the party. This caused Jurgens to feel concerned, although he and Jerz remained silent. Guereca drove for five minutes into a neighborhood with which Jurgens was unfamiliar. The neighborhood turned out to be in "the heart of Latin Kings territory." During the five-minute drive, Guereca made a phone call to some of his friends and pretended to be a member of the Folks street gang, saying things such as "folks, we got this." He also pointed to some people at a gas station and called them "Flakes," a derogatory term for Latin King members.

¶ 13 Guereca stopped the van on a residential street in front of a garage door, at the mouth of an alleyway. Everyone exited the van, except for Jerz and Jurgens. An SUV then pulled up right next to the van. Suddenly, Jerz and Jurgens were dragged out of the van and into the street, in a space

[2]The record does not explain who the man sitting next to Del Rio was, but it was not the defendant or any of his co-defendants.

between the van and the SUV. The defendant, his co-defendants, and the others who had pulled up in the SUV began beating Jerz and Jurgens. Jurgens felt himself being punched and kicked all over his body. He heard people yelling "Kill them, Folks," "Kill them SDs," and "SDK," which stands for Satan Disciples Killer.

¶ 14 Jurgens managed to temporarily break away from the people beating him. He saw Jerz down the street being kicked and punched by at least five people. Jurgens ran toward Jerz, but Guereca hit him across the forehead with a metal pipe, which "totally dazed" him. He then ran across the street to try to escape. As he ran, he felt the defendant, Guereca, and co-defendant Gonzalo Guerrero grabbing at him. They pulled off his coat, watch, and bracelet. As Jurgens slipped out of his coat, he was able to break away from the men chasing him. Guereca and Guerreo continued to chase and try to hit Jurgens, yelling "Let's get his ass." Jurgens was still running when he suddenly heard three gunshots, which caused him to freeze.

¶ 15 Meanwhile, Miguel Humberto Martinez was driving home from work. His house was located close to where the van and SUV had parked. Martinez testified that as he pulled up to the mouth of the alley, he saw the defendant, Guereca, and Guerreo beating up Jurgens. Martinez honked his car horn, and then saw Jurgens briefly escape, followed by Guereca and Guerreo chasing him. He looked across the street and saw Jerz trying to cover his face as the defendant, Rios, and others beat him. He saw Jerz try to get up, but the defendant grabbed him and held him while the others continued to punch him.

¶ 16 The defendant and the others then left Jerz lying in the street and entered the van. The defendant began driving the van, which accelerated toward Jerz. Martinez thought the van was going to run over Jerz, but it turned last minute and sped down a different street. Right then,

Villalobos appeared with a gun and shot Jerz three times in the back.

¶ 17 Right after Jurgens heard the gun shots, he ran down the street to "try to find any kind of help." He ran down to a street corner, and realized that Guereca and Guerreo were no longer chasing him. His cell phone was dead so he could not call anyone for help. He then heard police sirens coming from the area he had last seen Jerz, so he headed back. When he returned to the area, he saw that the van, the SUV, and the people who had beat him were all now gone. Jurgens saw Jerz lying face down on the street. Jerz was nonresponsive and covered in blood and bullet holes; he was later pronounced dead at the scene.

¶ 18 Investigators arrived and found Jurgens' coat and broken bracelet at the scene. They also discovered Guereca's cell phone and recovered surveillance video from Los Comales, which showed the defendant and his group leaving with Jerz and Jurgens. Jurgens and Martinez later identified the defendant in a lineup.

¶ 19 After the close of the State's case, the defendant did not testify or offer any evidence in his defense.

¶ 20 At the conclusion of the trial, the trial court acquitted the defendant of first degree murder,[3] but found him guilty of aggravated kidnapping, armed robbery, aggravated battery, and mob action. The trial court stated:

> "[Jurgens] made an [*sic*] horrendous mistake and he showed a tattoo of the Satan Disciples and saying that he's old school Satan Disciples. And that set off the chain of events. Now, I do not believe that up to that point that there was criminal intent that any of [the]

[3]Only co-defendant Villalobos was found guilty of first degree murder.

defendants had formed against [Jerz and Jurgens,] but from that moment that's exactly what happened and [the defendant, Villalobos, and Guereca] did form criminal intent and they acted quickly and immediately and it was like being put into a spider's web where somebody just falls into the web and cannot get out.

***

As to what happened at Los Comales restaurant and getting from that restaurant to the borderline where the crime scene actually occurred, I do find that the deceit, the lying, the false flagging, the tilting of the hats from one direction to another, inducing and deceiving [Jerz and Jurgens] to get into the vehicle under the pretense of getting a ride and taking them from one location that was supposed to be safe on their way home to another location that couldn't have been more dangerous, into the heart of the Latin Kings territory where violence was about to take place and which was starting to be planned in the car among the co-defendants, I do find that that does constitute aggravated kidnapping ***[.] [The defendant] who participated in this, who [was] part of the encounter in the bathroom, who persuaded [Jerz and Jurgens] to get into the car under the guise of going to a safe place *** [is] found guilty [of aggravated kidnapping].

***

[I]t is clear that a savage beating took place. This is gang activity in

> its truest nature. The only reason this happened is because they believed that [Jurgens] was a Satan Disciple. For that reason alone they thought it was incumbent upon them to take [Jerz and Jurgens] into their own territory and do as much damage as they could ***. And the taking of the property was done together as well. It was, I believe, part of a plan to rob and to beat."

¶ 21 Following his convictions, the defendant filed a motion for a new trial. His motion argued that the evidence was not sufficient to convict him of aggravated kidnapping or armed robbery. The court denied the motion.

¶ 22 At the sentencing hearing, the State asked for the trial court to sentence the defendant to the maximum sentence of 30 years. In aggravation, Jerz's mother read a victim impact statement, telling the defendant and his co-defendants: "[Y]ou may not have shot my son, but you all have his blood on your hands, and I hope you pay for that for the rest of your life." The State also introduced a certified copy of the defendant's 2008 adjudication of delinquency for vehicular invasion, attempt robbery, and unlawful restraint, for which he received probation. The defendant violated that probation and was recommitted to probation. The State also introduced a certified copy of the defendant's 2010 adult conviction for burglary, for which he also received probation. In 2011, the defendant was sentenced to six months' imprisonment for violating that probation.

¶ 23 In mitigation, defense counsel emphasized that the defendant was only 19 years old at the time of the incident and claimed that the defendant had progressed since then. In his allocution statement, the defendant apologized to Jerz's parents and said that he had been "bettering" himself by going to school and taking care of his family.

¶ 24 In its sentencing decision, the trial court noted that the defendant, along with Guereca, "took the lead in trying to secure [Jerz and Jurgens] to get them to another location." The court also stressed the seriousness of the crimes, stating that is was "done for the sole purpose of asserting their superiority *** this is gang-banging in its purest extent." The court acknowledged that the defendant and his co-defendants were "all young people," but also that they all had criminal backgrounds. The court then sentenced the defendant and his co-defendants to individualized sentences. The defendant was sentenced to concurrent sentences of: 22 years' for the aggravated kidnaping of Jurgens, 22 years' for the aggravated kidnaping of Jerz, 15 years for the armed robbery of Jurgens, 5 years for the aggravated battery of Jurgens, and 3 years for mob action.

¶ 25 The defendant filed a motion to reconsider sentence and asked the court to reduce his sentence to 19 years' imprisonment. In support, the defendant's sister read a letter from the defendant's mother, which stated: "My son is not the same person he was when this tragedy occurred." The court denied the defendant's motion, noting that the defendant had already received "second chances" after he was sentenced to probation for his prior convictions. This appeal followed.

¶ 26 ANALYSIS

¶ 27 We note that we have jurisdiction to review the trial court's judgment, as the defendant filed a timely notice of appeal. Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); R. 606 (eff. July 1, 2017).

¶ 28 The defendant presents the following three issues: (1) whether the State proved him guilty of aggravated kidnapping beyond a reasonable doubt; (2) whether the State proved him guilty of

armed robbery beyond a reasonable doubt; and (3) whether his sentence of 22 years' imprisonment was excessive. We take each issue in turn.

¶ 29 The defendant first argues that the State failed to prove him guilty of aggravated kidnapping beyond a reasonable doubt. Specifically, he claims that the State failed to prove that he intended to secretly confine Jerz and Jurgens, which is an element of aggravated kidnapping. He argues that he and his group never forced Jerz and Jurgens to board the van, and that Jerz and Jurgens were never physically restrained once inside the van nor were they prevented from leaving the van. According to the defendant, Jerz and Jurgens were never completely isolated from meaningful contact with the public, especially because Jurgens had his cell phone with him during the five-minute drive. In the alternative, the defendant argues that the asportation[4] of Jerz and Jurgens was merely incidental to the battery committed against them, which was "the gist of the case." He claims that if he and his co-defendants had merely dropped Jerz and Jurgens off instead of beating them, they never would have been exposed to any danger, and so his conviction for aggravated kidnapping cannot be sustained. He asks us to reverse his aggravated kidnapping conviction[5], or reduce it to unlawful restraint.

¶ 30 The State has the burden of proving each element of an offense, beyond a reasonable doubt. *People v. Gray*, 2017 IL 120958, ¶ 35. When a defendant challenges the sufficiency of the evidence, the proper standard of review is; whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime

[4]Asportation has long been defined as either a "carrying," "carrying away," or "removal" of goods "from one place to another," but the concept of asportation applies also to *persons*, pursuant to kidnapping statutes. *People v. Casiano*, 212 Ill. App. 3d 680, 686 (1991) (quoting (Black's Law Dictionary 105 (5th ed. 1979)).

[5]Although the defendant was actually convicted of *two* counts of aggravated kidnapping, we will refer to it as one conviction for the sake of clarity.

beyond a reasonable doubt. *Id*. A criminal conviction will not be reversed for insufficient evidence unless the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt as to the defendant's guilt. *Id*.

¶ 31 The operative offense in this case is aggravated kidnapping pursuant to 720 ILCS 5/10-2(a)(3) (West 2012).

> "A person commits the offense of kidnapping when he or she knowingly: (1) and secretly confines another against his or her will; (2) by force or threat of imminent force carries another from one place to another with intent secretly to confine that other person against his or her will; or (3) by deceit or enticement induces another to go from one place to another with intent secretly to confine that other person against his or her will."
>
> 720 ILCS 5/10-1(a) (West 2012)

And a person commits the offense of aggravated kidnaping when he "commits kidnapping and *** inflicts great bodily harm, other than by the discharge of a firearm, or commits another felony upon his or her victim." 720 ILCS 5/10-2(a)(3) (West 2012).

¶ 32 The element at issue is the intent to secretly confine. Although the kidnapping statute does not define "secret confinement," our supreme court has defined "secret" as "concealed, hidden, or not made public," and has defined "confinement" as "the act of imprisoning or restraining someone." *People v. Gonzalez*, 239 Ill. 2d 471, 479 (2011). "[S]ecret confinement can be shown through evidence that the defendant isolated the victim from meaningful contact with the public." *Id*. at 480.

¶ 33 The defendant concedes that a victim may be "secretly confined" even while inside a vehicle moving on a public roadway in view of others. *Id*. at 482 ("in certain instances[,] keeping a victim in a public place may be more effective than taking the victim to a location out of the public's view"). Nonetheless, the defendant still avers that Jerz and Jurgens were never secretly confined because they were never forced to board the van or physically restrained once inside it. However, intent to secretly confine is ordinarily proved through circumstantial evidence and inferences. *People v. Calderon*, 393 Ill. App. 3d 1, 7 (2009). The defendant may not have forced Jerz and Jurgens to board the van with physical strength, but he and his friends did use trickery and deceit to lure them into entering the van. The defendant and his cohorts went to great lengths to deceive Jerz and Jurgens into believing they were part of the same gang family. In other words, they used "deceit" to induce the victims into the van so that they could be transported into Latin King territory. Certainly, neither Jerz nor Jurgens consented to that. Jurgens testified that as soon as he realized the van was driving in the opposite direction from where his friends were located, he became "concerned." He and Jerz were taken into an unfamiliar neighborhood by people they thought to be members of a friendly gang. Even though the defendant and his group never physically restrained Jerz and Jurgens from exiting the van, it can easily be inferred. Jurgens testified that he thought the defendant and his friends were gang bangers. That coupled with the concern that they were being drivien away from the location that they wished to go suggested that the two men were too afraid to attempt to escape once they realized something was amiss.

¶ 34 We find *People v. Calderon,* 393 Ill. App. 3d 1 (2009) to be instructive. There, the victim "was not physically restrained in the car ***, and [the victim] did not attempt to flee from the car ***." *Id.* at 9-10. However, the victim "testified he did as he was told out of fear that the defendant

had a weapon in his pocket and the friends the defendant referred to in the SUV would beat him." *Id.* We found that to be sufficient circumstantial evidence from which the trier of fact could determine that the defendant's acts proved, beyond a reasonable doubt, that he intended to secretly confine the victim. *Id*.

¶ 35 The defendant in this case emphasizes that Jurgens had his cell phone during the van ride, and so he argues that Jerz and Jurgens were never meaningfully isolated from the public. Yet, the record reflects that Jurgens' phone was dead by that time. And even assuming *arguendo* that Jurgens' phone was working, it is highly doubtful under these facts, that the defendant and his group would have allowed Jurgens to use his phone to call for help had he tried.

¶ 36 Most importantly, the defendant and his group clearly *deceived* Jerz and Jurgens and thereby induced them to enter the van. The defendant and his cohorts then continued to pretend to be members of the Satan Disciplines as they drove Jerz and Jurgens to a different location in order to isolate them away from safety. We are not persuaded by the defendant's argument that the street where they beat Jerz and Jurgens was "not a secluded area, but a residential area" where "their actions were intentionally visible to anyone walking or driving home." The beatings took place just after 3:00 a.m. in "the heart of Latin Kings territory." No one knew where Jerz and Jurgens were at that time, including their friends waiting for them at the party. As the State points out, the defendant and his group could have simply attacked Jerz and Jurgens at Los Comales; but they wanted to isolate them from any possible help or safety, so they deceived them into entering the van and then drove them to a more dangerous and secluded area. See *People v. Quintana*, 332 Ill. App. 3d 96, 106 (2002) (a significant danger arises from the potential of more serious criminal activity due to the privacy of the final location).

¶ 37 Under the circumstances presented at trial, it was for the trier of fact to resolve whether the defendant acted with the requisite intent to secretly confine Jerz and Jurgens. The trial court having so found, we find no basis to disturb its verdict.

¶ 38 Alternatively, the defendant argues that his aggravated kidnapping conviction cannot stand because Jerz and Jurgens' "short and temporary asportation was incidental to the battery committed against them and did not create a significant danger to them independent to that posed by the battery." He claims that his group's intention was to "take Jurgens and Jerz to a place where they could meet other members of their gang and publicly beat Jurgens and Jerz," and so the short drive of transporting them to the Latin Kings neighborhood was "intrinsically linked to the intended offense of battery" and did not create an independent offense of kidnapping.

¶ 39 A defendant should not be convicted of kidnapping where the asportation or confinement of the victim was merely incidental to another crime. *People v. Eyler*, 133 Ill. 2d 173, 199 (1989). This court has established four factors to consider when determining whether an asportation or confinement is merely ancillary to another offense, or whether it rises to the level of an independent crime of kidnapping. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225–26 (2009). These factors include: (1) the duration of the asportation or confinement; (2) whether the asportation or confinement occurred during the commission of a separate offense; (3) whether the asportation or confinement is inherent in the separate offense; and (4) whether the asportation or confinement created a significant danger to the victim independent of that posed by the separate offense. *Id.* The question of whether an asportation was incidental to another crime "challenges incriminating inferences that may have been drawn by the trier of fact from the evidence," and so the correct standard of review is that which applies to a challenge of the sufficiency of the evidence. *People*

v. Sumler, 2015 IL App (1st) 123381, ¶ 53.

¶ 40 We begin our analysis with the first factor, the duration of the asportation or confinement. Although Jerz and Jurgens were inside the van for only five minutes, "it is well settled that a kidnaping conviction is not precluded by the brevity of the asportation." *People v. Jackson*, 331 Ill. App. 3d 279, 294 (2002). Indeed, this court has consistently upheld kidnapping convictions where the asportation lasted five minutes or less. See *Siguenza-Brito*, 235 Ill. 2d at 226.

¶ 41 Looking at the second factor, whether the asportation or confinement occurred during the commission of a separate offense, it strongly weighs against the defendant because the asportation occurred *prior to*, rather than during, the battery. We note that in his secret confinement argument, the defendant stressed that Jerz and Jurgens were never physically touched during the drive. Consequently, the battery offense could not have occurred *during* the asportation.

¶ 42 The defendant concedes that the third factor, whether the asportation or confinement is inherent in the separate offense, weighs against him. In order for asportation or confinement to be inherent in a separate offense, it must constitute an element of that offense. *Sumler*, 2015 IL App (1st) 123381, ¶ 59. And asportation and confinement are not elements of battery. *Id.*

¶ 43 Finally, we consider the fourth factor, whether the asportation or confinement created a significant danger to the victim independent of that posed by the separate offense. As discussed above, the entire point of transporting Jerz and Jurgens to the other location was to isolate them from any possible help or safety. By moving Jerz and Jurgens away from Los Comales to a secluded neighborhood, the defendant and his group reduced the likelihood of someone from the public interfering with the beatings. See *People v. Johnson*, 2015 IL App (1st) 123249, ¶ 28 (the

defendant heightened the danger to the victim by moving her to a secluded area and decreasing the likelihood that anyone would see or hear what was transpiring, especially in the dark in the middle of the night).

¶ 44 Moreover, the defendant and his group brought Jerz and Jurgens into "the heart of Latin Kings territory," where there was *additional* possible danger other than from the defendant and his group. Contrary to what the defendant claims, even if he and his group had merely dropped off Jerz and Jurgens without beating them, they would have been stranded in an unknown neighborhood, in the middle of the night, with no way to leave. And Jurgens, as a former member of the Satan Disciples, would have been exposed to even more danger in a Latin Kings neighborhood. Thus, after weighing all four factors, it is clear that the aggravated kidnapping offense was separate from the aggravated battery offense.

¶ 45 In sum, the State proved the defendant guilty of aggravated kidnapping beyond a reasonable doubt, including proving the requisite element of secret confinement; and the aggravated kidnapping offense was not incidental to the aggravated battery offense. We accordingly affirm the defendant's aggravated kidnapping conviction. In light of our proceeding analysis, we need not address the defendant's argument that his aggravated kidnapping conviction should be reduced to unlawful restraint.

¶ 46 The defendant next argues that the State failed to prove him guilty of armed robbery. He claims that he and his group never took possession of Jurgens' coat and bracelet, and that the items instead were merely pulled off during the physical struggle. In support of his argument, the defendant emphasizes that Jurgens' coat and bracelet were recovered at the scene. The defendant

further claims that his intention was to only beat Jerz and Jurgens, and not to rob them.[6]

¶ 47 The defendant's argument again challenges the sufficiency of the evidence, for which the proper standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Gray*, 2017 IL 120958, ¶ 35. His challenge is to his conviction for armed robbery: "A person commits robbery when he or she knowingly takes property *** from the person or presence of another by use of force or by threatening the imminent use of force." 720 ILCS 5/18-1(a) (West 2012). And "a person commits armed robbery when he or she violates Section 18-1; and he or she carries on or about his or her person or is otherwise armed with a dangerous weapon other than a firearm." 720 ILCS 18-2(a)(1) (West 2012).

¶ 48 The defendant concedes that a defendant need not take possession of the property in order to be convicted of robbery, (*People v. Tiller*, 94 Ill. 2d 303, 316 (1982)), but nonetheless contends that we should still reverse his conviction because Jurgens' coat and bracelet were simply "lost" during a "fight." This is an absurd argument under the facts of this case. There was never a "fight" or "melee" as the defendant portrays. Instead, it was a one-sided beating by the defendant and his group. And during the course of the beating, the defendant and his group robbed Jurgens, forcefully ripping off his coat, bracelet, and watch.

¶ 49 It is immaterial that Jurgens' coat and bracelet were recovered at the scene. The offense of robbery is complete when force or threat of force causes the victim to part with property against his will. *People v. Gaines*, 88 Ill. 2d 342, 367 (1981). Conviction for robbery was not contingent upon the defendant carrying away Jurgens' property after forcefully removing those items from

[6]The defendant does not contest that he and his group were "armed with a dangerous weapon, other than a firearm, to wit: a bludgeon."

Jurgens. *Id.* Reviewing the facts of the case, it is reasonable to infer that the defendant and his cohorts abandoned Jugens' items when they were interrupted by Martinez honking his car horn and/or Villalobos shooting Jerz. Moreover, Jurgens testified that the defendant and his group also took his watch, and the record reflects that his watch was not recovered at the scene.

¶ 50 Undoubtedly, the defendant and his group intended to beat *and* rob Jerz and Jurgens as part of their gang rivalry. The trial court even noted how the defendant and his group intended to rob Jerz and Jurgens *in addition to* beating them so that they could "do as much damage as they could." And it is irrelevant when that intent to rob was formed. See *People v. Kidd*, 175 Ill. 2d. 1, 43 (1996) ("If, as the result of a quarrel, a fight occurs in which one of the parties is overcome, and the other then, without having formed the intention before the fight began, takes the money of the vanquished one, the offense committed is robbery.") (quoting *People v. Jordan*, 303 Ill. 316, 319 (1922)). Thus, it does not matter if the defendant and his group originally planned to only beat Jerz and Jurgens, and then later decided to also rob them. It was nonetheless robbery. Accordingly, we affirm the defendant's conviction of armed robbery.

¶ 51 Finally, the defendant challenges his sentence of 22 years' imprisonment. He argues that the trial court did not consider his young age at the time of the offense (19 years old), his strong family ties, and his limited criminal background, which led to an excessive sentence.

¶ 52 The Illinois Constitution requires that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. In sentencing, the trial court must consider "all factors in aggravation and mitigation, including, *inter alia*, the defendant's age, demeanor, habits, mentality, credibility, criminal history, general moral character, social environment, and

education, as well as the nature and circumstances of the crime and of [the] defendant's conduct in the commission of it." *Quintana*, 332 Ill. App. 3d at 109. The trial court, however, is given great discretion in determining a sentence within the limits set by the legislature. *People v. Haley*, 2011 IL App (1st) 093585, ¶ 63. This court will not substitute its judgment for that of the trial court merely because it may have balanced the appropriate factors differently. *People v. Benford*, 349 Ill. App. 3d 721, 737 (2004). And where a sentence falls within the statutorily mandated guidelines, it is presumed to be proper. *Id.* A trial court's sentence will not be disturbed on review absent an abuse of discretion. *People v. Johnson*, 347 Ill. App. 3d 570, 573-74 (2004). An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable or where no reasonable person would take the view adopted by the trial court. *Id.*

¶ 53 We agree with the State that the trial court did not abuse its discretion in sentencing the defendant. The sentencing range for the defendant's convictions was 6 to 30 years' imprisonment, and the State requested the maximum of 30 years. Thus, the defendant's sentence of 22 years' imprisonment is well within the statutory range, so we must presume it to be proper. Furthermore, the trial court explicitly stated that it considered the mitigating factors, including the defendant's youth. The trial court noted that the defendant had already received "second chances" after he was sentenced to probation for his prior convictions. Presumably, the court noted that the defendant's strong family ties had not persuaded him from prior criminal activity. And the trial court properly focused on the seriousness of the crimes, referring to the incident as a "heinous event" that "never should have happened." Despite the defendant's argument to the contrary, the record reflects that the trial court carefully considered all the relevant factors and crafted an appropriate sentence. Accordingly, we affirm the defendant's sentence of 22 years' imprisonment.

¶ 54 CONCLUSION

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

¶ 56 Affirmed.