2013 IL App (4th) 110630-U

NO. 4-11-0630

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 15, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
JOVANDA L. WHITE,	)	No. 09CF978
Defendant-Appellant.	)	
	)	Honorable
	)	Harry E. Clem,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Appleton and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's judgment where (1) the trial court did not err by denying defense counsel's motion *in limine* and (2) defendant's concurrent 25-year sentences for aggravated vehicular hijacking were not excessive.

¶ 2 In June 2009, the State charged defendant, Jovanda L. White, with two counts of aggravated vehicular hijacking (720 ILCS 5/18-4(a)(1) (West 2008)). Before defendant's April 2011 trial commenced, but after the trial court had sworn in the jury, defense counsel made a motion *in limine* to prohibit the State from entering into evidence any statements defendant made to Sergeant Dan Morgan, based on an alleged violation of Illinois Supreme Court Rule 412 (eff. Mar. 1, 2001). The trial court denied defense counsel's motion.

¶ 3 Following defendant's trial, the jury found defendant guilty of both counts of aggravated vehicular hijacking. In June 2011, the trial court sentenced defendant to concurrent

25-year prison terms.

¶ 4 Defendant appeals, arguing (1) the trial court erred by denying defense counsel's motion *in limine* and (2) defendant's concurrent 25-year sentences are excessive. We affirm.

¶ 5 I. BACKGROUND

¶ 6 In June 2009, the State filed an information, charging defendant with two counts of aggravated vehicular hijacking, a Class X felony (720 ILCS 5/18-4(a)(1), (b) (West 2008)), for an offense that took place in April 2009. Defendant was arrested and arraigned on the charges in May 2010, but the trial court subsequently found him unfit for trial on September 25, 2010. In February 2011, the court entered an order for restoration of fitness.

¶ 7 In April 2011, the parties appeared for defendant's jury trial. Following *voir dire* and the trial court's swearing the jury, but prior to the commencement of defendant's trial, defense counsel made the following motion *in limine*:

> "Your Honor, I have a brief motion *in limine* based on information that was disclosed to me recently. And that has to do with the fact that there's a video or some kind of audiotape of my client's statement that was transcribed. Apparently the officers no longer have the actual audiotape. We have the transcription that the State would like to enter into evidence through their officer. I'm not claiming a due process violation, or bad faith by the officers or the State. However, under Supreme Court Rule 412, disclosure to accused, it indicates that we are entitled to any written or recorded statements made by an accused. What happened here,

> Judge, is that the officer, Detective Morgan, took a taped statement of my client on like a thumb drive for a computer. It was put on the hard drive, apparently—and if I get this wrong, [the State] can correct me—they put it on their server at the police department. They made a transcription of it, which I have a copy of. When they left it on the server, after a certain period of time, without taking it off or doing something with it, it was automatically taped over, and therefore, they never made an actual recording of it.
>
> It is our position that we are entitled to that. We don't have that. Again, it's not a due process violation[,] it's a Supreme Court Rule violation, and we believe under Supreme Court Rule 415, one of the remedies could be exclusion of such evidence. And based upon that information, Judge, we're asking that the court be precluded from entering any evidence as to any statement that my client made to Detective Morgan."

¶ 8 The State replied Urbana police department personnel attempted to recover the tape but could no longer locate it on the server. The State requested Morgan be allowed to testify as to the statements based on his memory of the conversations with defendant but did not request to admit the transcript into evidence. The State further suggested defense counsel could use the transcript as impeachment or to refresh Morgan's recollection. In response, defense counsel argued not viewing the video impaired defense counsel's ability to adequately cross-examine Morgan about the statements defendant made. Actually, although not clear, the statement

appears to have been audiotaped, not videotaped. Specifically, counsel asserted viewing the video recording would allow counsel to see the demeanor of defendant and the detectives and to hear "the voice intonation, the pauses and so on."

¶ 9 The trial court denied defense counsel's motion. Thereafter, the parties presented the following evidence.

¶ 10 A. Charlotte Palmer

¶ 11 Charlotte Palmer testified she was 74 years old at the time of trial. In April 2009, she lived in the Florida House apartments, a retirement village. On April 26, 2009, she took Esther Eldridge to Cracker Barrel for lunch in her grey, two-door, 1995 Buick. As she and Eldridge returned from lunch, Eldridge noticed two thin, tall, black men walking from around the corner of the building. The men were wearing black clothing. Eldridge suggested she and Palmer wait to enter the building because they were not supposed to let strangers into the building.

¶ 12 Within a minute or two, the men approached Palmer's car. One of the men grabbed Palmer's left wrist through her opened window and told her to "get out of the f-ing car, you bitch." The man then punched Palmer in the jaw with his other hand, grabbing her by her neck and yanking her out of the car. He demanded Palmer give him her keys.

¶ 13 As the man yanked Palmer out of her car, she fell to the ground. She sustained injuries to her wrist, the back of her neck, her rotator cuff, and her jaw. The two men then got into the car and departed. At trial, Palmer said defendant "look[ed] familiar," opining he may have been the man on Eldridge's side of the car. Palmer's apartment building did not have exterior video cameras.

¶ 14 On cross-examination, Palmer testified she was not taking any medication on the day of the incident that would have impaired her sight, hearing, or alertness. Palmer did not see the two men until they were approaching the front of her vehicle. Palmer remembered one of the men was taller than the other one, and she believed the taller man came to her side of the car and hit her. She stated she was not "one hundred percent for sure" whether the man grabbed her through the open window or whether he "pushed the door back and grabbed through the door." Palmer said the taller man told the shorter man, "get in the car," although she did not know if she told this to the officers on the day of the crime.

¶ 15 B. Esther Eldridge

¶ 16 Esther Eldridge testified she was 73 years old at the time of trial and lived in the Florida House apartments in April 2009. Upon returning from lunch on the day of the incident, Esther started to open her car door but then noticed two men "coming around on the sidewalk." She instructed Palmer to "wait a minute." After approximately five minutes, Eldridge opened her door to exit the vehicle and "the next thing [she] knew" a "guy jerked [her] out" and pushed her against the next car. After pulling Eldridge from the car, the man got into the Buick. Eldridge heard Palmer scream and looked over to see the other man "holding her by her neck" and hitting Palmer with his fist. After the man pulled Palmer from the car, he got in and started the vehicle. Eldridge saw the two men drive away.

¶ 17 Although she was holding two phones, Eldridge was unable to dial 9-1-1 but instead just "kept screaming." When she finally entered the apartment building, she asked her neighbor to call 9-1-1. Eldridge went back outside to check on Palmer, who was just getting off the ground.

¶ 18 Eldridge described both men as African-American, with one of the men "just a little taller than the other one." The shorter man, who was on Eldridge's side of the car, was wearing a black hat and a black outfit with a yellow design on the side of the shirt and pants. Eldridge did not get a good look at the man on Palmer's side of the car, nor did she get a good look at either of the men's faces. She was "not completely positive" she could identify either man in the courtroom on the day of trial.

¶ 19 On cross-examination, Eldridge said she was not taking any medications or suffering from any physical ailments on the day of the incident that would have impaired her ability to see, hear, or be alert. She could not hear the men speaking to each other because she was screaming.

¶ 20 C. Robert Fitzgerald

¶ 21 Robert Fitzgerald, a lieutenant with the Urbana police department, testified he was called to the Florida House apartments around noon on the day of the incident. Upon arriving at the apartments, he found Palmer and Eldridge inside the building. Both women were "very shaken," and Palmer, whose mouth was bleeding, was complaining about an injury to her arm. Fitzgerald took a statement from Eldridge but was unable to locate any witnesses or obtain physical evidence from the scene. An Urbana police department employee later entered the Buick's license plate and information into the Law Enforcement Agencies Data System (LEADS) database, which Fitzgerald explained would enable any officer in the country who ran the license plate to identify the car as stolen from Urbana, Illinois.

¶ 22 D. Agreed Stipulation

¶ 23 The parties stipulated if called to testify, Brian Moore of the Seymour,

Indiana, police department would state he was on duty on April 27, 2009, when officers located a gray, four-door Buick, with a license plate that matched Charlotte Palmer's plate, in Crawfordsville, Indiana. He assisted in apprehending the vehicle's three occupants: defendant, Reginald Haywood, and Ian Keys. Officers transported the Buick and the three occupants to the Seymour, Indiana, police department.

¶ 24 E. Dan Morgan

¶ 25 Dan Morgan, a sergeant with the Urbana police department, testified in April 2009, he was assigned to the criminal investigation of an aggravated vehicular hijacking at the Florida House apartments. On April 28, 2009, he learned police had recovered a vehicle from the crime in Seymour, Indiana. Thereafter, he traveled to Seymour, where he learned three people were in custody, one of whom was defendant. Morgan met with the officers who had recovered the Buick to discuss their recovery of the vehicle and to observe and discuss potential evidence in and around the vehicle. Inside the Buick, Morgan found "items that appeared to be inconsistent" with the registered owners of the vehicle, including black Carhartt jackets, baseball caps, ear buds, and a pocketknife.

¶ 26 After examining the car, Morgan and Matt Quinley, a detective at the Urbana police department, interviewed defendant in the Brown County, Indiana, jail. The officers did not record this first interview. Defendant told the officers he first became aware the car was stolen when police arrested him in Indiana. Defendant said he was coming from somewhere in Indiana and had not been in Champaign-Urbana for about a week and a half. He denied being in Urbana on April 26, 2009, the day the car was stolen. Defendant would not reveal the names of the other two occupants of the vehicle. Defendant said he first got into the Buick on April 27,

2009, when a friend picked him up. Defendant and his friend then picked up a third person and "headed to Georgia." Defendant neither admitted hijacking the vehicle nor denied it. When Morgan asked defendant twice, "[y]ou're not saying you did it, you're just saying you're not going to tell us you did, is that right?" respondent replied "yeah."

¶ 27 About 40 minutes after the first interview, Morgan and Quinley spoke to defendant again. This time, the officers recorded the interview on a digital handheld tape recorder; however, by the time of trial, the recording was unavailable. Morgan explained the procedure he follows with respect to digital recordings as follows: after an interview, he plugs his recorder into his computer's universal serial bus (USB) port to download the interview recording to a designated "read only" drive. He then notifies a transcriptionist he needs the statement transcribed. The transcriptionist retrieves the statement from the file, types it out, and sends a copy to Morgan. Morgan then listens to the file while reading the transcript, making any needed corrections, and submits his report. Finally, Morgan makes a compact disc (CD) copy of the actual recording and submits that recording into evidence.

¶ 28 According to Morgan, "somewhere along the line" in this case, he became busy and did not make the CD copy. The recording sat on the drive, and "after a period of time through back-up systems," Morgan was unable to access it. Morgan contacted the information services department, which searched through back-up files and conducted a forensic scan of Morgan's tape recorder and computer, but it was unable to recover the recording.

¶ 29 Morgan testified during defendant's second interview, defendant admitted knowing Reginald Haywood. Defendant said he learned Haywood was wanted on local warrants and sought out Haywood at an address south of the Florida House apartments. Defendant and

Haywood then made a mutual decision "to flee Illinois." Defendant said as he and Haywood were walking by the Florida House apartments, they saw two women in a car, at which point Haywood approached and started to pull one of the women out. Defendant followed Haywood's lead, removing the woman on his side, getting into the passenger seat, and accompanying Haywood straight to Indianapolis. According to defendant, he and Haywood did not discuss what they were going to do to the women; rather, it was "spur of the moment." Morgan testified defendant "genuinely seemed concerned" when he heard about the injuries Palmer sustained, asking several questions about the extent of the injuries.

¶ 30 According to Morgan, officers did not show either victim a photo lineup of the car hijacking suspects because "the victims did not feel like they had a good look at them." Further, given defendant's admission he was in the car and he took part in what happened in Urbana, Morgan testified conducting a photo lineup "didn't seem to be a productive thing to do." Morgan observed defendant was shorter than Haywood; thus, based on his investigation, Morgan believed defendant was on the passenger side of the vehicle. Morgan was unable to recover any trace evidence, such as fibers or hair, because the contact between the victims and the assailants was brief and because the victims moved around for "several minutes" before the officers received a report of the incident's occurrence.

¶ 31 On cross-examination, Morgan stated defendant was born in 1986, Haywood was born in 1989, and Keys was born in 1992. When Morgan met defendant two days after the hijacking, defendant "had some facial hair," but Morgan did not notice a chipped tooth. Morgan did not tape-record or videotape his initial conversation with defendant, which lasted almost two hours, because "[i]t's pretty typical that at initial contact" the conversation "can be often

irrelevant, very wide ranging, of little value."

¶ 32 Morgan admitted he failed to follow his department's policy when he did not make a CD recording of the interview. Initially during the second interview, defendant continued to deny his involvement in the hijacking. Defendant never gave a narrative of his involvement in the hijacking, but rather, agreed with assertions Morgan or Quinley made or corrected assertions they made. During the second interview, in response to Morgan stating, "I want to make sure its clear that we didn't threaten you or talk mean to you," defendant said he "felt intimidated" by the officer's presence because he "didn't like [police officers]" and "something just didn't feel right."

¶ 33 F. Defendant

¶ 34 Defendant testified he was 24 years old. In April 2009 and at the time of trial, defendant was 5 feet, 7 inches tall and weighed 135 pounds. He began wearing a goatee in 2004, and he has a chipped tooth. In 2004, defendant was convicted of obstruction of justice.

¶ 35 Defendant had known Haywood, who was younger and taller than defendant, for six or seven years. Keys is Haywood's brother, whom defendant met in 2004. In April 2009, defendant was living with his brother in Illinois and a family in Indianapolis, Indiana. Defendant first saw the Buick in Indianapolis, when Keys and Haywood, who was driving, picked up defendant. Defendant did not know who owned the car.

¶ 36 That night, police arrested the three men, at which point defendant learned the vehicle had been stolen. Defendant later spoke to Sergeant Morgan in jail. During the first conversation with Morgan, defendant told Morgan he "knew nothing of" the carjacking. About half an hour or an hour after the first interview ended, Morgan returned for a second conversation. Defendant could not recall whether this second interview was recorded, although

he testified he saw Morgan taking out a device and later, at the end of the interview, he saw Morgan "messing with the device" again.

¶ 37 According to defendant, during his second interview, defendant did not tell Morgan he had any involvement with the car taking in Urbana. Defendant described Morgan as being "aggressive" during the interview, with Morgan "controll[ing] the conversation more." He told Morgan he "felt intimidated" because he "felt like [Morgan] was pressuring [him] for some type of information that [he] had no knowledge of." Defendant did not know who took the car from Urbana.

¶ 38 On cross-examination, defendant stated he was in Urbana in early April but denied being there toward the end of the month. He testified he never told Morgan he was in Urbana a week and a half before his arrest. At some point in April, defendant read in the newspaper Haywood had a warrant for his arrest, but defendant never talked to Haywood about leaving Illinois.

¶ 39 Matthew Quinley testified in rebuttal he was present during defendant's April 2009 interview in Indiana. During the second interview, Quinley asked defendant if his intention when leaving Haywood's girlfriend's house was to "try and go and find a car," to which defendant replied, "the intention was to get the fuck out of Illinois." Defendant said initially their intention was to get dropped off by a family member. When Quinley asked defendant if their intention changed when they saw Palmer and Eldridge in the parking lot, defendant agreed. Quinley asked defendant about conversations between Haywood and defendant, and defendant responded, "[']we got to go.['] That was the conversation, wasn't no conversation." On cross-examination, Quinley acknowledged although he reviewed the transcript of the conversation between

defendant and Morgan, he did not listen to the audiotape to confirm the transcript accurately reflected the tape.

¶ 40 G. The Jury's Decision, Defendant's Sentence, and Defendant's Posttrial Motions

¶ 41 On this evidence, the jury found defendant guilty of both counts of aggravated vehicular hijacking. In May 2011, defendant filed a motion for acquittal or new trial, arguing, among other things, the trial court erred by "allowing the State to elicit evince [*sic*] from police officers that Defendant made a statement in relation to this offense. The statement was recorded, lost and not available to the defense. This prevented Defendant from fully and adequately cross-examining the witnesses about the statement and the circumstances surrounding it." Following a June 2011 hearing, the trial court denied defendant's motion and proceeded to sentencing. The court sentenced defendant to concurrent 25-year prison terms on each count. In pronouncing defendant's sentence, the court noted although defendant had experienced a difficult childhood, he did not work and did not demonstrate any remorse for the crime he committed, which "was an imminently [*sic*] deterable [*sic*] offense."

¶ 42 In June 2011, defendant filed a motion to reconsider sentence, alleging his sentence was excessive and the trial court improperly weighed the factors in mitigation and aggravation. Defendant's motion also alleged the trial court erred in its determination of defendant's culpability as compared to the culpability of his codefendant, Haywood. At a hearing later that month, the court denied defendant's motion.

¶ 43 This appeal followed.

¶ 44 II. ANALYSIS

¶ 45 On appeal, defendant asserts (1) the trial court erred by denying defense counsel's

motion *in limine* and (2) defendant's 25-year sentence was excessive. We address defendant's assertions in turn.

¶ 46 A. Defense Counsel's Motion *in Limine*

¶ 47 Defendant first contends the trial court erred by denying defense counsel's motion *in limine,* which sought to preclude the State from introducing evidence of statements defendant made to Morgan and Quinley during his second interview. Counsel's motion *in limine* alleged the officers failed to provide the recording of defendant's statements to the officers, thereby violating Illinois Supreme Court Rule 412 (eff. Mar. 1, 2001). The State responds (1) the trial court lacked the ability to entertain defendant's motion because the motion was "in the nature of a suppression motion" and jeopardy had already attached, or, in the alternative, (2) the trial court did not err by denying the motion *in limine*. We agree the trial court did not err by denying defense counsel's motion.

¶ 48 Pursuant to Illinois Supreme Court Rule 412(a)(ii) (eff. March 1, 2001), the State must disclose, upon written motion of defense counsel, "any written or recorded statements and the substance of any oral statements made by the accused or by a codefendant." Possible sanctions a trial court may impose against a party that has failed to comply with an applicable discovery rule include forcing disclosure of the missing information, granting a continuance, excluding the evidence, or entering any other order the trial court deems just. Ill. S. Ct. R. 415(g)(i) (eff. Oct. 1, 1971). "[T]he purpose of the discovery rules is to protect the accused against surprise, unfairness, and inadequate preparation." (Internal quotation marks omitted.) *People v. Hood*, 213 Ill. 2d 244, 258, 821 N.E.2d 258, 266 (2004). Defendant carries the burden of showing surprise or prejudice. *People v. Heard*, 187 Ill. 2d 36, 63, 718 N.E.2d 58, 74 (1999).

¶ 49 We review a trial court's decision as to the appropriate sanction for a discovery violation for an abuse of discretion. *Hood*, 213 Ill. 2d at 256, 821 N.E.2d at 265. A reviewing court will find an abuse of discretion when a defendant is prejudiced by the discovery violation and the trial court fails to eliminate that prejudice. *People v. Weaver*, 92 Ill. 2d 545, 559, 442 N.E.2d 255, 260 (1982). We first determine whether the State's failure to preserve the recording in this case constituted a discovery violation. *People v. Kladis*, 2011 IL 110920, ¶ 24, 960 N.E.2d 1104, 1109. Where, as here, the facts giving rise to the alleged discovery violation are not in dispute, we assess whether a discovery violation occurred employing a *de novo* standard of review. *Hood*, 213 Ill. 2d at 256, 821 N.E.2d at 265.

¶ 50 The State argues no discovery violation occurred because the State was not required to provide a CD containing a copy of the electronic recording.

¶ 51 The trial court entered a pretrial discovery order in May 2010, requiring the State to disclose (1) "the names and last known addresses of person[s] whom the State intends to call as witnesses, together with their relevant written or recorded statements" and (2) "any written or recorded statements and the substance of any oral statements made by the accused or by a co-defendant and a list of witnesses to the making or acknowledgment of such statements." The order required the State's compliance within 10 days at a time, place, and manner mutually agreeable to the State and defense counsel, or, if the parties could not agree on a time, place, or manner of compliance, the order required the State to proceed "in accordance with Supreme Court Rule 412(e) subparagraphs (I) and (II)." Rule 412(e) provides the State may perform its discovery obligations by: "(i) notifying defense counsel that material and information, described in general terms, may be inspected, obtained, tested, copied, or photographed, during specified

reasonable times; and (ii) making available to defense counsel at the time specified such material and information, and suitable facilities or other arrangements for inspection, testing, copying and photographing of such material and information." Ill. S. Ct. R. 412(e)(i) to (e)(ii) (eff. March 1, 2001).

¶ 52 In its June 2, 2010, answer to defendant's motion for discovery, the State responded "defendant made a series of oral statements witnessed by officers and possibly others, as set forth in the attached reports." According to the prosecutor, those police reports referenced the recording. The prosecutor also provided a transcript of the recording to defense counsel on June 2, 2010. The record does not indicate defense counsel filed a discovery motion in this case requesting to copy or listen to the electronic recording, nor did defense counsel allege the State failed to comply with such a motion.

¶ 53 In support of his claim a discovery violation occurred, defendant cites *Kladis*, in which the supreme court concluded the State committed a discovery violation by failing to preserve a recording of the defendant's stop and arrest. *Kladis*, 2011 IL 110920, ¶ 39, 960 N.E.2d at 1112. We note, however, in *Kladis*, the defendant, five days after his arrest, filed a document premised on Illinois Supreme Court Rule 237 (eff. July 1, 2005), requesting the State produce " 'any and all video tapes' " of the defendant while she was in custody. *Kladis*, 2011 IL 110920, ¶ 3, 960 N.E.2d 1106. The squad car video was still in existence at that time. By contrast, here, defense counsel did not file a motion to produce or preserve the recording.

¶ 54 Moreover, even if a discovery violation occurred, the trial court did not abuse its discretion by denying defense counsel's request to suppress testimony about the statements defendant made to Morgan. Defense counsel claimed the State's failure to provide the recording

impeded counsel's ability to cross-examine the detectives because he could not assess the demeanor or voice intonation of defendant or the detectives.

¶ 55 The sixth amendment provides a defendant the right "to be confronted with the witnesses against him." U.S. Const., amend. VI. This right includes "the right to cross-examine a witness as to the witness' biases, interests, or motives to testify." *People v. Triplett*, 108 Ill. 2d 463, 474, 485 N.E.2d 9, 14-15 (1985). While the confrontation clause guarantees the right to cross-examination, the confrontation clause does not guarantee "cross-examination that is effective in whatever way, and to whatever extent, the defendant may wish." (Internal quotation marks omitted.) *People v. Tracewski*, 399 Ill. App. 3d 1160, 1165, 927 N.E.2d 1271, 1275 (2010).

¶ 56 In defense counsel's cross-examination of Morgan, counsel was able to elicit from Morgan he violated departmental policy by failing to make a CD of the recording. Defense counsel's cross-examination also elicited that during the second interview, defendant (1) told Morgan he felt "intimidated," (2) initially continued to deny his involvement in the hijacking, and (3) did not provide a narrative of his involvement in the hijacking, but rather, agreed with police assertions. Thus, defense counsel effectively cross-examined Morgan about his failure to preserve the recording, thereby challenging Morgan's credibility, and also elicited testimony from which the jury could ponder the voluntariness of defendant's confession. Moreover, defense counsel was provided a verbatim transcript of defendant's statement and asserted there was no bad faith on the part of the police with respect to the loss of the recording. Based on the foregoing, the trial court did not abuse its discretion by declining to suppress testimony about defendant's statements to Morgan.

¶ 57 B. Defendant's Claim His Sentence Is Excessive

¶ 58 Defendant next asserts his 25-year sentence is excessive in that (1) it is manifestly disproportionate to the nature of the offense, and (2) the trial court failed to adequately consider defendant's rehabilitative potential. Specifically, defendant argues, based on the testimony of Eldridge, Morgan, and Palmer, "it is reasonable to assume" defendant pulled Eldridge, not Palmer, from the car, and Eldridge did not testify as to sustaining physical injuries. Defendant also posits his sentence is excessive because (1) the longest prison sentence defendant had received prior to this offense was two years' imprisonment; (2) defendant demonstrated rehabilitative potential, given his age, the fact his family was present at his sentencing, and his statement in allocution, in which he expressed a desire for self-improvement; and (3) defendant suffered from mental illnesses, a troubled childhood, family problems, and sleep disorders.

¶ 59 A trial court has broad discretion in imposing a sentence, and we will not overturn a sentence on appeal absent an abuse of discretion. *People v. Hale*, 2012 IL App (4th) 100949, ¶ 35, 967 N.E.2d 476, 484. A sentence within statutory limits will be deemed excessive and an abuse of discretion only where the sentence "is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *People v. Fern*, 189 Ill. 2d 48, 54, 723 N.E.2d 207, 210 (1999). When mitigating factors are presented to the trial court, we presume the court considered them. *People v. Pippen*, 324 Ill. App. 3d 649, 652, 756 N.E.2d 474, 477 (2001). In addition, the existence of mitigating factors does not obligate a trial court to reduce a sentence from the maximum sentence allowed. *Pippen*, 324 Ill. App. 3d at 652, 756 N.E.2d at 477.

¶ 60 Here, the jury convicted defendant of two counts of aggravated vehicular

hijacking, a Class X felony eligible for a sentence of between 6 and 30 years. 720 ILCS 5/18-4(a)(1), (b) (West 2008), 730 ILCS 5/5-8-1(a)(3) (West 2008). The trial court sentenced defendant to concurrent 25-year sentences. In pronouncing defendant's sentence, the court stated it considered the information in aggravation and in mitigation. The court recognized defendant experienced a difficult childhood but also noted defendant did not work or demonstrate any remorse for the crime he committed.

¶ 61 Defendant's sentence is not excessive. As the State aptly points out, defendant's presentence investigation report revealed defendant had three prior felony convictions for obstructing justice, unlawful possession of a weapon, and theft. Given defendant's criminal history, his lack of demonstrated remorse, and the nature of his crime, the trial court did not abuse its discretion by sentencing defendant to 25 years in prison.

¶ 62 III. CONCLUSION

¶ 63 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment as costs of this appeal.

¶ 64 Affirmed.