No. 120011

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellant, v. WILLIS REESE, Defendant-Appellee.	On Appeal from the Appellate Court of Illinois, First District, Fourth Division, No. 1-12-0654 There Heard on Appeal from the Circuit Court of Cook County, Criminal Division 07CR-8683 Honorable Kenneth J. Wadas, Judge Presiding

BRIEF AND APPENDIX OF PLAINTIFF-APPELLANT

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ORAL ARGUMENT REQUESTED

POINT AND AUTHORITIES

NATURE OF THE CASE

On March 22, 2007, defendant Willis Reese was incarcerated in the Cook County Jail, having been found guilty of a contract murder only days earlier. (R.SSS150) Because of a medical complaint, defendant was brought to Stroger Hospital. (R.SSS128) There, armed with a shank, he attacked the sheriff's officer guarding him. (R.QQQ74-84, SSS124-28) After escaping custody of that officer, defendant also stabbed a patient and a nurse while running out of the hospital. (R. RRR40-44, RRR103-12, SSS25) Once outside, defendant ran onto a parked hospital shuttle bus, put the shank to driver's neck, and ordered him to "drive" while threatening to stab him. (R.QQQ119-24) The driver drove the bus only a few feet before he opened the door, causing the bus to stop abruptly. (R. QQQ122-25) Defendant struggled with the driver, stabbing and cutting him multiple times, and was detained by police when he ran from the bus. (R. QQQ60, QQQ89, QQQ90-93, QQQ124-34, RRR145-50)

Defendant was thereafter charged by indictment with multiple offenses, including aggravated vehicular hijacking. (C.37-58) Following his jury trial, defendant was found guilty of the charged offenses, including aggravated vehicular hijacking for which he was sentenced to 50 years. (R.TTT135, WWW57; C.155-59) Defendant appealed his convictions, arguing, as relevant here, that the State failed to prove him guilty of aggravated vehicular hijacking because there was no proof that he "dispossessed" the driver of the bus. The appellate court agreed. In a 2-1 decision, the majority reversed defendant's conviction for aggravated vehicular hijacking, holding that "[w]hile defendant's actions may have denied [the bus driver] a measure of control over his vehicle, there was no evidence that defendant actually took possession of the bus, or removed it from [the bus driver's] possession." People v. Reese, 2015 IL App (1st) 120654, ¶ 59. The People seek reversal

of this portion of the appellate court's judgment. No question is raised on the pleadings.

JURISDICTION

This Court allowed the People's Petition for Leave to Appeal on March 30, 2016. Jurisdiction lies under Supreme Court Rules 315, 604(a)(2) and 612(b).

ISSUE PRESENTED FOR REVIEW

Whether the appellate court erroneously interpreted the term "takes" in the aggravated vehicular hijacking statute (720 ILCS 5/18-4(a)(4)) to conclude that the statute applies only where the offender "dispossesses" the victim of the vehicle, or, in other words, takes the vehicle away from the victim.

STANDARD OF REVIEW

This case involves a question of statutory interpretation that this Court reviews *de novo*. People v. Brown, 2013 IL 114196, ¶ 35; People v. Giraud, 2012 IL 113116, ¶ 6.

RELEVANT STATUTORY PROVISIONS INVOLVED

720 ILCS 5/18-3. Vehicular hijacking

Sec. 18-3. Vehicular hijacking. (a) A person commits vehicular hijacking when he or she takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force.

(b) For the purposes of this Article, the term "motor vehicle" shall have the meaning ascribed to it in the Illinois Vehicle Code [625 ILCS 5/1-100 *et seq.*].

(c) *Sentence.* Vehicular hijacking is a Class 1 felony.

720 ILCS 5/18-4. Aggravated vehicular hijacking

Sec. 18-4. Aggravated vehicular hijacking. (a) A person commits aggravated vehicular hijacking when he or she violates Section 18-3 [720 ILCS 5/18-3]; and

(1) the person from whose immediate presence the motor vehicle is taken is a physically handicapped person or a person 60 years of age or over; or

(2) a person under 16 years of age is a passenger in the motor vehicle at the time of the offense; or

(3) he or she carries on or about his or her person, or is otherwise armed with a dangerous weapon, other than a firearm; or

(4) he or she carries on or about his or her person or is otherwise armed with a firearm; or

(5) he or she, during the commission of the offense, personally discharges a firearm; or

(6) he or she, during the commission of the offense, personally discharges a firearm that proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person.

(b) *Sentence*. Aggravated vehicular hijacking in violation of subsections (a)(1) or (a)(2) is a Class X felony. Aggravated vehicular hijacking in violation of subsection (a)(3) is a Class X felony for which a term of imprisonment of not less than 7 years shall be imposed. Aggravated vehicular hijacking in violation of subsection (a)(4) is a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court. Aggravated vehicular hijacking in violation of subsection (a)(5) is a Class X felony for which 20 years shall be added to the term of imprisonment imposed by the court. Aggravated vehicular hijacking in violation of subsection (a)(6) is a Class X felony for which 25 years or up to a term of natural life shall be added to the term of imprisonment imposed by the court.

STATEMENT OF FACTS[1]

Defendant was charged with multiple counts of attempt murder, aggravated battery, aggravated kidnapping, aggravated vehicular hijacking, vehicular invasion, attempt armed robbery, disarming a police officer, intimidation, and escape. (C.37-58) Prior to trial, the State dismissed the attempt murder and aggravated battery charges. (R.PPP3, PPP6-8) Following a jury trial, defendant was found guilty of aggravated vehicular hijacking, unlawful vehicular hijacking, escape, attempt armed robbery, and not guilty of disarming a police officer. (R.TTT135; C.155-59) The court declared a mistrial on the hung count of

[1] On appeal, defendant raised multiple issues, including, *inter alia*, complaints about his waiver of counsel, challenges to *voir dire*, and an attack on the court's response to the jury's question about the attempt armed robbery charge. Because the appellate court rejected those challenges (People v. Reese, 2015 IL App (1st) 120654, ¶¶ 37-132) and thus those issues are not presently before this Court, the People will not recount in detail all of the record facts regarding those challenged events.

aggravated kidnapping (R.TTT135-38), and sentenced defendant to concurrent terms of 14 years for escape, 30 years for attempt armed robbery, 30 years for unlawful vehicular invasion, and 50 years for aggravated vehicular hijacking. (R.WWW55-56) The court also ordered these sentences to run consecutive to defendant's life sentence imposed in a separate murder conviction. (R.WWW57; Supp.CL. 2)

Trial [2]

At trial, Cook County Sheriff's Officer Vito Zaccaro testified that on March 22, 2007, he was working at Stroger Hospital. Shortly after 1 p.m., he took custody of defendant, who had been brought from Cook County Jail to Stroger Hospital by other officers. (R.QQQ74) At this time, defendant was wearing a standard issue Department of Corrections inmate uniform (pullover shirt and pants with a "DOC" stamp), with his hands cuffed and his legs shackled. (R.QQQ76) Per procedure, Officer Zaccaro removed defendant's transport handcuffs, but immediately placed other handcuffs on defendant. Officer Zaccaro also patted down defendant, but did not discover any weapon. (R.QQQ77) Defendant was then brought to the second floor dermatology clinic, where only his handcuffs were removed and where he was seen by two doctors. (R.QQQ78) During the exam, defendant repeatedly said he needed to use the washroom, but was told by one of the doctors that he could use the washroom after the exam. (R.QQQ78) After the exam, Officer Zaccaro moved defendant to a nearby washroom, checked the room for any possible

[2] Although the public defender had been appointed to represent him, defendant opted to represent himself after being advised of the lengthy prison sentence he was facing and after defendant acknowledged the "massive time" he would serve if found guilty. (R.Supp.7-18) Accordingly, defendant conducted his own *voir dire* and represented himself at trial, but later accepted appointment of an attorney for post-trial motions and sentencing. (R.PPP3-196, TTT138)

method of escape, and then allowed defendant to enter with his hands still uncuffed but his feet shackled. (R.QQQ79-80)

Leaving the door ajar, Officer Zaccaro waited for about 10 minutes; during this time, he could only see a glimpse of defendant sitting on the toilet. (R.QQQ81) When defendant came out, Officer Zaccaro asked defendant to put his hands out, but, according to the officer, defendant "jumped toward the one side with a silver metal weapon, placed it to my neck and said 'Move or I'll cut you.'" (R.QQQ81) Officer Zaccaro also felt defendant's hand going down his right side towards his holstered weapon, so the officer threw his arms up to prevent defendant from taking his gun. (R.QQQ82-83) Defendant then stabbed the officer in his neck and ran. (R.QQQ83) Officer Zaccaro hit the "panic button" on his radio to signal an emergency and ran after defendant. (R.QQQ84) During the chase, defendant was slashing his weapon through the air, but Officer Zacarro did not shoot because there were other people in the hallways. One of those individuals, a male nurse, was standing in the middle of the hallway, so Officer Zaccaro yelled for him to get out of the way. (R.QQQ85)

After defendant ran past that nurse, he ran down an emergency stairwell, exiting the hospital on the ground floor. (R.QQQ86) Following, Officer Zaccaro ran outside and saw defendant enter a shuttle bus parked nearby. (R.QQQ87) After defendant ran onto the bus, the doors of the bus closed and the bus started to move. (R.QQQ88) As several officers ran alongside the bus, it made an "unusual maneuver" and "just kind of stopped." (R.QQQ88) When defendant ran out of the bus, he was tackled by police. (R.QQQ89, 90-93)

On cross-examination, Officer Zaccaro explained that he could not recall if another individual, James Rayford Holman, had assisted him in the fight with defendant, because he was so focused on defendant. (R.QQQ116-17)

James Rayford Holman testified that, in the early afternoon of March 22, 2007, he was at Stroger Hospital for medical treatment. (R.RRR98-100) While in an exam room with nurse Vicki Hill, he heard "some kind of banging and knocking." (R.RRR100) Believing that someone in an adjacent exam room might have fallen, Mr. Holman became concerned, and then immediately heard a male voice yelling "help, help, help." (R.RRR100) Nurse Hill opened the exam room door and said, "oh, my God, help" and started running down the hallway. (R.RRR101) When Mr. Holman left the room, he saw two men fighting and struggling; the larger man (whom he identified as defendant) was wearing a prison jumpsuit and the smaller man was in police uniform. (R.RRR102-03) According to Mr. Holman, defendant was reaching around with one of his hands punching at the officer and with the other hand reaching for the officer's belt, "trying to pull the gun out or whatever was on his side." (R.RRR103, 107) It appeared to Mr. Holman that the officer was attempting to protect his right side, while defendant kept reaching for that side and "punching" at the officer's face and head. (R.RRR103) Mr. Holman wanted to assist the police officer and ran across the hall to "bust up everything" by crashing into the two. (R.RRR108) After the collision, defendant got up and hit Mr. Holman in the face and eye with something metal, causing three stab wounds to Mr. Holman's eye that later required surgery. (R.RRR111-12, RRR116-23) Defendant ran away and the officer followed. (R.RRR114, RRR116)

On cross-examination, defendant attempted to establish that he had never actually demanded the officer's gun or said "give me your gun." (R.RRR137) He also suggested that he was only trying to take the officer's key. (R.RRR.126-29, RRR132-40)

Nurse Victoria Hill testified that she was working at Stroger Hospital with patient James Holman when she heard bumping outside the room. (R.SSS21) She looked out into

the hallway and saw defendant and a sheriff struggling. (R.SSS22-23) According to Hill, the sheriff "looked like he was trying to hold [defendant] back from getting his gun [in his belt holster] or something or getting away." (R.SSS23) Hill then started screaming and ran down the hall to the nurse's station, where she called police. (R.SSS24-25) After calling police, she saw defendant and the sheriff run past her. Hill followed behind the two, yelling "stop him, stop him," and her coworker, Nurse Nestor Francia, tried to intervene. (R.SSS25-26) Defendant ran past Francia, out of the hospital and onto a parked shuttle bus. (R.SSS26, SSS27-34)

On cross-examination, defendant asked Nurse Hill if she really knew what defendant was reaching for, and she answered, it "appeared [defendant] was going for the gun." (R.SSS35-37) Nevertheless, she admitted that she did not see defendant touch the gun nor did she hear defendant "make a verbal demand for the officer's gun." (R.SSS38)

Nurse Nestor Francia was working as a nurse at Stroger Hospital when he heard his supervisor Victoria Hill yelling from another area of the Dermatology clinic. She was shouting "don't let him get away, don't let him get away." (R.RRR41) He then saw a man shackled at the feet, wearing an inmate uniform and running towards an exit door. (R.RRR41) Francia chased after the inmate trying to grab at his pants, but the inmate slashed at Francia, cutting him on his left arm. (R.RRR42-44) The inmate then continued running away. (R.RRR.44) At trial, Nurse Francia was unable to identify defendant as the inmate who cut him, but he agreed that he had identified a photo of defendant on March 26, 2007. (R.RRR47-48)

On cross-examination, defendant asked Nurse Francia if the inmate was just trying to get out of the hospital, not running towards any people. (R.RRR50-51) Defendant also asked Nurse Francia if Nurse Francia had balled up his hand in a fist towards the inmate.

(R.RRR53) Nurse Francia answered "no" to both questions. (R.RRR53)

James Rimmer, a 64-year-old bus driver, testified that, on March 22, 2007, he was working for the Colonial Bus Company as a driver on a shuttle bus that made runs between the Cook County Juvenile Court parking lot and Stroger Hospital. (R.QQQ119-20) At 1:45 p.m., he was seated in the driver's seat of the bus, which was parked by the main entrance of Stroger. The bus was running, the doors were open, and there were a few passengers. (R.QQQ120-21, QQQ124) At this time, a man in a jail inmate uniform jumped onto the bus from the front door. (R.QQQ121) According to Mr. Rimmer, "once that person got on the bus, he stood over me, left hand, I guess, behind my seat, and right hand in front of my face. I seen an object in his hand, and he ordered me to drive. He said to me drive. 'Drive. If you stop, I'm gonna stab you in the neck.'" (R.QQQ122) According to Mr. Rimmer, the inmate was black, but Mr. Rimmer "didn't get a chance to see his face clearly." (R.QQQ123)

Responding to the inmate's demand, Mr. Rimmer "closed the door to the bus and put the bus in drive and tried to drive out of the lot." (R.QQQ123) After Mr. Rimmer drove the bus only a short distance, he opened the door, which caused the bus to lurch to a stop:

> "I pulled out from the curb and I had drove about maybe from here to your desk there, and there was a car blocking the entrance where I couldn't get around, because it's like a horseshoe and there was a car blocking the entrance and I couldn't get around. *** I opened the door, and [the inmate] didn't see my hand, which is why I did it, I reached over and I opened the door. And once you open the door, the interlock comes on and the brakes locks up. And when the brake locks up, if you're standing still it automatically will throw you forward." (R.QQQ124-25)

According to Mr. Rimmer, the only reason he started driving the bus was because the inmate had gotten on the bus with a sharp object and was holding it to Mr. Rimmer's neck, threatening to stab him if he did not drive. (R.QQQ149) The inmate then "went forward" and Mr. Rimmer "grabbed his arm with the object and started wrestling with him." (R.QQQ125) The inmate stabbed Mr. Rimmer twice in his face with a downward motion,

and also stabbed him in his chest. (R.QQQ126-27) Seconds later, the inmate broke loose, ran out of the front exit door, and was immediately tackled by police. (R.QQQ127, QQQ129-34)

On cross-examination, defendant attempted to establish that the bus stopped only because there was a car in the way, but Mr. Rimmer explained, "The car didn't stop the bus. *** I didn't have to stop because of the car. I stopped because I had to slow down and get around the car. So instead of stepping on the brakes, it just come to me while the person is standing up, if you're standing up and I throw my door open, you automatically go forward, so it give me a chance to get out of the situation I was in." (R.QQQ137) Mr. Rimmer also explained that the inmate stabbed him because Rimmer was trying to stop him:

> "I got stabbed. We were wrestling and I was really trying to hold him because I know the security, the police and the security guard was outside, so I was trying to hold him until, you know, I get some help. In the meantime, he was stabbing me, stabbing, you know. So he stabbed me and cut me in the chest and cut me upside the face. We was just wrestling." (R.QQQ138)

Mr. Rimmer agreed that the inmate never announced a "hijacking in progress," got behind the wheel, or gave directions "exactly where to take the bus." (R.QQQ144-45) He further agreed that the inmate did not initially harm him physically when threatening to cut him if he did not drive. (R.QQQ145) Nevertheless, Mr. Rimmer thought that he was a hostage. (R.QQQ141)

Sharon Jambrosek, one of the passengers on the shuttle bus, testified that an inmate wearing a tan DOC uniform got on the bus and went up to the driver and said, "drive, mother fucker, drive." (R.RRR22) At the time, Ms. Jambrosek could see only the back of the inmate, who was standing to the right of the driver. (R.RRR22) The driver started driving the bus, tried to drive around a parked car, and quickly stopped the bus. (R.RRR22-23) At this time, there was "a lot of commotion" and it looked like the inmate was stabbing

the driver. (R.RRR23) On cross-examination, she agreed with defendant that the inmate did not announce a hijacking or kidnapping. (R.RRR27) Mrs. Jambrosek also testified that "the bus driver was doing what the [inmate] wanted him to do" and "I believe the inmate touched the bus driver first, because he's the one that came on to the bus and went right to the bus driver." (R.RRR28, RRR35)

Sergeant Gregory Hardin of the Cook County Hospital police testified that he received a radio call about an escaped prisoner. (R.RRR142-43) Responding, the sergeant and two or three other officers ran down the corridor towards the main entrance. (R.RRR143-44) Once there, they were directed to a shuttle bus, coming around a *cul de sac*. (R.RRR145) Running up to the bus, which had just stopped, the sergeant could see defendant raising his hand and "like punching the bus driver" with a downward motion. (R.RRR145) With his weapon drawn, Sergeant Hardin approached the bus and got on from the rear side door. At this time, defendant turned towards him and made a stabbing motion with his right hand from about five feet away. (R.RRR149-50) Sergeant Hardin did not fire his gun at defendant because there were passengers aboard the bus. (R.RRR150) Instead, he ordered defendant to stop and get down, but defendant ran out the front door of the bus, after which other officers tackled defendant. (R.RRR150, 151-60)

Hospital Police Sergeant William Villasana testified that he heard a radio call about a "scuffle" on the second floor of the hospital between a corrections officer and an inmate. (R.QQQ58-59) When he got there, he was directed to where the inmate had run and saw a police officer lying on the ground. (R.QQQ60) He pursued the inmate to the parked bus. (R.QQQ60) He entered the bus and approached the driver, who was bleeding from his neck. (R.QQQ60) The sergeant saw that other officers outside had apprehended the inmate (defendant), who was dressed in a jail uniform. (R.QQQ60-61, 65) He soon after found a

steel shank wrapped with cloth near the bus.[3] (R.QQQ63; Peo. Exh 17)

Cook County Sheriff's Investigator Joe Dugandzic testified that he was assigned to investigate defendant's attempted escape from Stroger Hospital; at the time of the escape, defendant was an inmate in the Cook County Jail "on a felony offense." (R.SSS42) After defendant's arrest, Investigator Dugandzic gathered all the witnesses and victims and conducted interviews. (R.SSS40-43) He showed photo arrays to Hill, Francia, Zaccaro, and Holman, and, individually, they each positively identified defendant as the inmate/attacker. (R.SSS43-45)

At the conclusion of the State's evidence, defendant moved for a directed verdict, which was denied. (R.SSS78-79) Defendant then testified in his own behalf.[4]

In narrative form, defendant first discussed his prior murder charge. (R. SSS116-121, 122) He admitted that he had been convicted of that unrelated murder, but also told the

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[3] The shank, in addition to other physical evidence, was submitted for testing. (R.QQQ33-53, RRR68-73) No suitable prints were recovered from the shank, because the surface area of the piece of metal was relatively small. (R.RRR7-15) Defendant's prints were not recovered from Officer Zaccaro's gun. (R.RRR89-90) DNA testing disclosed that DNA extracted from blood on the bathroom floor matched Officer Zaccaro, DNA from the exam room floor matched Mr. Holman, there was no match to the DNA on the bus rail, and defendant could not be excluded from the DNA extracted from the shank's cloth. (R.SSS10-13) In addition to the forensic evidence, the jury was shown a video from the hospital stairwell, showing defendant running out of the hospital in his jail inmate uniform. (Peo. Exh. 48; R.RRR151-60)

[4] Before taking the stand, defendant first attempted to call four witnesses (Assistant Public Defender David McMahon; Assistant State's Attorney James Comroe; and Cook County Sheriff's Investigators Antwon Boyd and Edward Glinsey), but his questioning was improper, and, ultimately, no relevant evidence was received from these witnesses. (R.SSS80-87, SSS90-100, SSS101-106, SSS107-110) The court then admonished defendant about his right to testify, and reminded him that if he chose to testify, his prior conviction for murder could be admitted. (R.SSS111-12) When defendant asked "how far does that play out?" the court advised defendant that if he testified consistently with his opening statement regarding his "necessity" defense (claiming he tried to escape only because he had been beaten by jail guards the year before), then "the State would be allowed to not only cross examine him on that, but *** the State would be able to rebut that motive with that [murder] case." (R.SSS113-14)

jury that he was innocent and "still in the process of clearing [his] name." (R. SSS116-121, 122) He also admitted that prior to his escape attempt, he had spent 4½ years in the Cook County Jail. (R.SSS122-23) Defendant then explained why he had attempted to escape. (R.SSS124-28) According to defendant, he had a mole on his leg, and because he had just read about melanoma, he asked to be taken to the dermatologist; as a result of his request, he was taken to the hospital clinic three times. (R.SSS128) During his third time at the hospital, he tried to escape, but only because he was suffering in jail, and had been attacked by jail guards about a year before his murder trial. (R.SSS125-27) According to defendant, this attack had caused bruising, stitches and a three-day hospital stay. Although he believed it was likely to happen again, defendant explained that he did not try to escape immediately because he thought he would be found not guilty in his murder trial. (R.SSS127) After he was found guilty of murder, he knew he had to escape to save himself, because he was innocent, and others who were also suffering in the jail. (R.SSS128, SSS133)

Defendant did not deny having the knife or shank, but explained that everyone in prison had one. (R.SSS130-31) He also claimed that when he was in the bathroom, he had tried to take his shackles off by using the shank to jimmy the lock, but was unsuccessful. (R.SSS131) It was then that he decided to take Officer Zaccaro's keys. (R.SSS131) He told Officer Zaccaro, "give me your keys," but when the officer said no, defendant tried to take them. (R.SSS132) When Mr. Holman joined the struggle, defendant knew he was not going to be able to get the keys, so he fought off the two men and ran. (R.SSS133-34) Defendant also claimed that Nurse Nestor Francia essentially caused his own "minor" injuries by "swiping" at defendant. (R.SSS135)

Defendant further claimed that, when he got outside, he went up to the bus and got on, because the doors were open. (R.SSS135) He calmly asked the driver for help, saying:

"please driver I'm in trouble I'll explain everything to you later." (R.SSS135) And, according to defendant, the driver "[b]ought the plea," and said "okay and mobilized the bus." (R.SSS136) As the bus was driving, defendant saw all the officers chasing, "knew the gig was up," and then told the bus driver, "open the door, okay?" (R.SSS136) Mr. Rimmer, the bus driver, then attacked defendant: "[h]e jumped up, grabs me, I turn around, we engage in a physical altercation" and "during the process, the same way with the first two gentleman, we're punching at each other and I accidentally hit him with the knife." (R.SSS136) Defendant also said he surrendered peacefully to police. (R.SSS137)

Defendant denied wanting to hurt anyone, claiming instead that he was trying to "avoid people." (R.SSS140-41) He also denied trying to kidnap or hijack anyone:

> "That's my testimony. I was not going for the officer's gun. I didn't want his gun. I didn't need his gun. I wanted the cuff keys to take off the shackles. They were still on my feet. When it comes to whether or not I was trying to kidnap anyone, I never told anyone they were being kidnapped. I never did anything of that. I wanted to get on that bus for the purposes of blending in and getting a ride out of the area. Once I got a ride out of the area, my plan was to run somewhere else and eventually alert the police. And with that being said, that's about it." (R.SSS142-43)

On cross-examination, defendant admitted that, in the prior murder case, the jury had found that he had committed the murder by personally discharging a firearm that caused the victim's death. (R.SSS150) When the prosecutor asked defendant if that meant that he was facing a potential sentence of 45 years to natural life in prison, defendant denied committing the crime (R.SSS151), but acknowledged the sentencing range: "Well, the Judge had mentioned it to me, yeah, and so I knew I was facing a considerable amount of time in prison, yes." (R.SSS153) Defendant further claimed that Mr. Rimmer, the bus driver, was at first cooperative and was injured when he grabbed defendant after having a "change of heart" about helping defendant get away:

"Well, you got to understand something, sir, the bus was surrounded by police, [Mr.

Rimmer] didn't like the way it looked, felt that, okay, this may come off as me aiding and abetting an escaping prisoner, I don't want to go down. Let me do something to redeem myself, and that's when he had a change of heart and he sprung up to attack me and tried to make it look like he was actually against the situation when he initially agreed to drive the bus. Now you get it?" (R.SSS165-66)

Following defendant's testimony, the defense rested. (R.SSS174) In rebuttal, the State presented a certified statement of conviction in case No. 02 CR 20394(01), wherein defendant was found guilty of first-degree murder on March 19, 2007. (R.SSS174, TTT14)

Jury Deliberations

Following arguments and instructions, the jury sent multiple questions, including, "does the term secretly apply to the confinement itself or does the term secretly apply to the subject's intent to confine?" (R.TTT123; C.161) After discussion, the court answered that the term "secretly" applies to both the confinement and the suspect's intent to confine. (R.TTT124-30) The jury also asked "Is it attempted robbery on one specific item or anything at all. Example. Pen, badge, socks, shoes, anything or one item." (R.TTT116; C.165) As to the attempted robbery question, defendant pointed out that the charging instrument referred to his reaching for Officer's Zaccaro's gun: "I think that's all they should be worried about." (R.TTT117) The court then explained to defendant that reference to the gun in the *attempt* armed robbery charge was surplusage because nothing was taken:

"THE COURT: If it turns out the evidence in the trial, the actual proof turns out to be slightly different than what was in the alleged - - what was alleged in the indictment, for example, your testimony that you were trying to take his keys, that is sufficient to constitute armed robbery. It's property. Property. Anything.

THE DEFENDANT: I understand that. I had a misconception about how this goes. I thought if the State brings the charge against a person, they need to state what exactly went down, what they're claiming I was going for that was my initial notion about this, but you cleared that up now." (R.TTT118)

The court then answered the jury's question: "Your instructions contain the definition of armed robbery. Reread the instruction. This instruction does not make reference to a specific

piece of property and includes any property of the victim." (C.165)

Thereafter, the jury returned verdicts of guilty of aggravated vehicular hijacking, unlawful vehicular hijacking, escape, attempt armed robbery, and not guilty of disarming a police officer. (R.TTT135; C.155-59) The court declared a mistrial on the hung count of aggravated kidnapping, after which the State dismissed that count. (R.TTT135-38)

Sentencing

Following presentation of extensive evidence in aggravation and mitigation, the court sentenced defendant to concurrent terms of 14 years for escape, 30 years for attempt armed robbery, 30 years for unlawful vehicular invasion, and 50 years for aggravated vehicular hijacking. (R.WWW55-56) The court ordered these sentences to run consecutive to defendant's life sentence in the unrelated murder case. (R.WWW57; Supp.CL. 2)

Appeal

Defendant appealed, arguing *inter alia* that his conviction for aggravated vehicular hijacking should be reversed because he never "took" the bus away from the bus driver, but only forced him to drive the bus by threatening to stab him with the shank. Citing People v. McCarter, 2011 IL App (1st) 092864, ¶¶ 71-79, defendant claimed that the offense of vehicular hijacking only occurs if an offender himself drives off with the vehicle because that is the only way to "take" a vehicle. See Id. (holding that, to prove vehicular hijacking, State must prove defendant "took" vehicle "away" from victim), citing People v. Strickland, 154 Ill. 2d 489, 252-26 (1992) ("the automobile was never removed from [the victim's] actual possession" and thus offenders did not commit *armed robbery*).

A majority of the appellate court agreed with defendant, holding that a person must "dispossess" the victim of the vehicle, *i.e.* "actually take possession" of the vehicle, to commit aggravated vehicular hijacking. People v. Reese, 2015 IL App (1st) 120654, ¶ 59

("While defendant's actions may have denied [the bus driver] a measure of control over his vehicle, there was no evidence that defendant actually took possession of the bus, or removed it from [the bus driver's] possession."). The majority did not explain what it meant by "actually take possession." Id. at ¶ 69 ("there are undoubtedly circumstances in which a defendant can 'take' a vehicle from a victim while the victim still remains inside[; h]owever, the determination of whether a victim has been dispossessed is a fact-specific inquiry, which turns on the particular circumstances of each case"). The dissenting Justice disagreed, finding that the offense of vehicular hijacking was not beholden to an interpretation of the armed robbery statute and therefore Strickland should not control. Reese, 2015 IL App (1st) 120654, ¶¶ 138-56. Noting the legislative purpose behind the statute, the dissent found that the most reasonable interpretation of the vehicular hijacking statute includes the facts in the present case. Id.

ARGUMENT

THE APPELLATE MAJORITY'S DETERMINATION THAT THE TERM "TAKES" IN THE VEHICULAR HIJACKING STATUTE MEANS THAT A PERSON MUST ACTUALLY BE "DISPOSSESSED" OF THE VEHICLE IS OVERLY NARROW AND CONTRARY TO THE PLAIN LANGUAGE OF THE STATUTE, BECAUSE IT WOULD NOT APPLY TO THE SCENARIO HERE, WHERE A DEFENDANT HIJACKS A VEHICLE BY THREATENING THE DRIVER AND FORCING HIM TO DRIVE THE VEHICLE AGAINST HIS WILL.

The appellate majority's opinion construed the term "takes" in the vehicular hijacking statutes (720 ILCS 5/18-3(a) (vehicular hijacking) and 720 ILCS 5/18-4(a)(3) (aggravated vehicular hijacking)) far too narrowly. According to the majority, the actual commandeering of a vehicle is excluded from the reach of the vehicular hijacking statute because in such a case, like the present crime, the offender has not "taken" the vehicle away from the victim, or "dispossessed" the victim of the vehicle. People v. Reese, 2015 IL App

(1st) 120654, ¶ 59. This reasoning not only ignores the plain language and title of the statute, but also runs counter to the purpose of the statute and excludes the most dangerous conduct from the statute's scope.

A. The Plain Language Of The Statute Does Not Require The Offender To "Dispossess" The Victim Of The Vehicle.

As this Court recently noted, the meaning of any statute is best ascertained by the plain language of that statute — and all statutes must be read consistent with the legislative purpose in enacting that statute:

> "The cardinal rule of statutory construction is to give effect to the intent of the legislature, presuming the legislature did not intend to create absurd, inconvenient, or unjust consequences. People v. Gaytan, 2015 IL 116223, ¶23. The best indicator of such intent is the language of the statute, which is to be given its plain and ordinary meaning. People v. McChriston, 2014 IL 115310, ¶15. In determining the plain and ordinary meaning of the statute, we consider the statute in its entirety, the subject it addresses, and the apparent intent of the legislature in enacting it. People v. King, 241 Ill. 2d 374, 378 (2011). We may also consider the resulting consequences from construing the statute one way or the other. People v. Marshall, 242 Ill. 2d 285, 293 (2011)."

People v. Goossens, 2015 IL 118347, ¶ 9; see also People v. Bradford, 2016 IL 118674, ¶ 15. Furthermore, statutory language, unless ambiguous, must be given the fullest, rather than the narrowest, meaning possible. People v. Simpson, 2015 IL 116512, ¶ 30.

In interpreting the aggravated hijacking statute, the appellate majority erred by looking beyond the statute at issue, relying on an appellate case (McCarter), which in turn incorrectly relied on a decision from this Court (Strickland) interpreting *the armed robbery statute*, not the vehicular hijacking statute. See Reese, 2015 IL App (1st) 120654, ¶¶ 55-57, citing People v. McCarter, 2011 IL App (1st) 092864, ¶¶ 71-79, 74, citing People v. Strickland, 154 Ill. 2d 489, 552-26 (1992) (rejecting claim that defendants committed offense of *armed robbery* by forcing driver of vehicle to drive, at gunpoint, with defendants as passengers, because "the automobile was never removed from [the victim's] actual

possession"). Reasoning that because the legislature used the same term—"takes"—in both the armed robbery and vehicular hijacking statutes, McCarter exported Strickland's narrow use of that term in the armed robbery context into vehicular hijacking. The majority in this case followed suit.

Strickland should not control resolution of the construction of the vehicular hijacking statute. Imposing the analysis and holding from Strickland wholesale onto the vehicular hijacking statute results in absurdity, such that an actual hijacking, or commandeering of a bus, as happened in this case, is outside the purview of the vehicular hijacking statute. See The Oxford English Dictionary (2d ed. 1993) (definition of "hijack": "Illegally seize (an aircraft, ship, or vehicle) in transit and force it to go to a different destination or use it for one's own purposes"); People v. Warren, 173 Ill. 2d 348, 357 (1996) ("In construing a statute, every part, including its title, must be considered together."). Put simply, "armed robbery and aggravated vehicular hijacking statutes are not substantially the same." People v. LaRue, 298 Ill. App. 3d 89, 91 (1st Dist. 1998). They clearly were meant to address different criminal conduct, and thus Strickland is inapposite, and neither McCarter, nor the majority in this case, should have narrowly read the term "takes" in the vehicular hijacking statutes as identical to its use in the armed robbery statute.

Contrary to the appellate majority's understanding of the aggravated vehicular hijacking statute, the plain language of the statute does not require that the offender "dispossess" the victim of the vehicle, nor does it require that the offender actually take the car away from the victim. All that the vehicular hijacking statute requires is that an offender "takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-3(a); 720 ILCS 5/18-4(a). Nothing in the statute requires that the term "takes" mean only to dispossess.

The plain and unambiguous language of the vehicular hijacking statutes does not exclude the present case from its reach. On the contrary, the title of the statute, coupled with the definition of the offense, supports a construction of the statute that includes defendant's acts here. After all, defendant hijacked, and took, the bus by force when he threatened to stab the driver if the driver did not start driving away from the hospital. See Reese, 2015 IL App (1st) 120654, ¶¶ 149-50 (Palmer, J., dissenting, "the plain and ordinary meaning of the word 'hijack' does not include a requirement that a vehicle be taken away from the victim"). Since the statute only deals with vehicles, and since a vehicle can be "taken" by hijacking it with the victim still at the wheel or inside the vehicle, the vehicular hijacking statute plainly encompasses the conduct at issue here.

B. The Appellate Court Should Not Have Relied Solely On McCarter, Which Was Erroneously Based On An Armed Robbery Decision From This Court Issued Before Creation Of The Vehicular Hijacking Statutes.

Notwithstanding the plain language of the statute, the appellate court majority was "compelled" to follow another appellate decision (McCarter, 2011 IL App (1st) 092864) and an inapposite case from this Court construing the unrelated armed robbery statute (Strickland, 154 Ill. 2d 489, 252-26). With these cases as its predominant guide, the appellate majority concluded that the word "takes" in the vehicular hijacking statutes must be given the same meaning that this Court provided in 1992 when addressing the armed robbery statute. Reese, 2015 IL App (1st) 120654, ¶¶ 55-58.

The appellate majority, however, should not have relied on McCarter where that case was wrongly decided, insofar as it relied upon an inapposite armed robbery case from this Court (Strickland) predating the creation of the vehicular hijacking statute. The vehicular hijacking statute should be analyzed on its own terms, particularly because "taking" a vehicle in a hijacking is different than the taking of any other object during a

robbery. And the "hijacking" or "taking" of a vehicle, by its own terms, necessarily includes the illegal seizure of a vehicle, while in transit, in order to force it to go to a different destination or use it for one's own purpose. See The Oxford Dictionary (9th ed. 1995) (defining the term "hijack").

Yet, in McCarter, 2011 IL App (1st) 092864, ¶¶ 71-79, the appellate court held that, to prove a vehicular hijacking, the State must show that the defendant "took" the vehicle *away from* the victim, just as in an armed robbery. Id. ¶ 74 (rejecting application of vehicular hijacking statute to situation where "the defendant forces the victim to drive his own car to another location"). McCarter arrived at this narrow interpretation of the vehicular hijacking statute's use of the word "takes" by looking exclusively at an armed robbery case from this Court (Strickland) that had rejected the claim that the defendants committed the offense of armed robbery of a vehicle by forcing the driver of a vehicle to drive with the defendants as passengers. See Strickland, 154 Ill. 2d at 252-26 (not armed robbery because "the automobile was never removed from [the victim's] actual possession").

Rather than simply considering the new offense of vehicular *hijacking*, McCarter compared the statute to other sections of the Criminal Code, in particular the robbery statute, which also involved the "taking" of property from a victim. McCarter, 2011 IL App (1st) 092864, ¶ 75. But McCarter overlooked the fact that Strickland was a 1992 case discussing and interpreting the armed robbery statute, before the legislature created the vehicular hijacking offense in 1993. Id. at ¶¶ 76-78, citing Strickland, 154 Ill. 2d 489, 525-26 (1992). Borrowing the analysis from Strickland, McCarter stated that it was "compelled" to interpret the "taking" element of vehicular hijacking in the identical manner as the similarly-worded element in the armed robbery statute. McCarter, 2011 IL App (1st) 092864, ¶ 79, quoting

Strickland, 154 Ill. 2d at 525-26 (armed robbery "is complete when force or threat of force causes the victim to part with possession or custody of property against his will").

McCarter should never have used Strickland's analysis as its sole guide to the meaning of the vehicular hijacking statute, because, for one, the two statutes serve different purposes. Additionally, the common law offense of robbery must be read consistent with its common law roots, whereas vehicular hijacking owes no such allegiance. Accordingly, the term "takes" need not be read narrowly in the context of the vehicles at issue in the vehicular hijacking statute. This Court's decision in Strickland bears this out.

In Strickland, the defendant was charged with, *inter alia*, the murder of a police officer and the armed robbery of a civilian victim. According to the evidence, after shooting and killing a police officer, defendant and his brother fled. When they came upon the adult victim, seated in the victim's parked car with his nine-year-old grandson and his 15-year-old nephew, they ordered the victim, at gunpoint, to drive them to California. The victim drove some distance on expressways and eventually reached the downtown area of Chicago. During the trip, the defendant and his brother sat in the back seat of the car, and the victim and the two boys occupied the front seat. Throughout the journey, the two defendants threatened to "pop" the victims if they failed to cooperate. After the victim exited the expressway, he saw a marked police car, stopped his own vehicle in front of the squad car, and got out to alert the officer. The defendant and his brother then fled from the victim's vehicle.

On appeal, the defendant argued that he was not proven guilty beyond a reasonable doubt of armed robbery of the victim's vehicle because there was no evidence that he or his brother ever took the vehicle *from the victim*, where the victim remained in operation of the car throughout the time they were present. The State responded that because the defendant

and his brother effectively controlled the use of the vehicle, they were in constructive possession of it, and thus "took" the vehicle from the victim. This Court rejected the State's argument and reversed the convictions for armed robbery, after finding that the defendants had not actually taken the vehicle away from the victim:

> "As we have noted, the offense of robbery requires proof that the accused took property from the person or presence of another by force or the threat of force. (See Ill. Rev. Stat. 1985, ch. 38, pars. 18-1, 18-2.) 'The taking by force or the threat of force is the gist of the offense' (Ill. Ann. Stat., ch. 38, par. 18-1, Committee Comments, at 113 (Smith-Hurd Supp. 1992)), and the offense 'is complete when force or threat of force causes the victim to part with possession or custody of property against his will' (People v. Smith (1980), 78 Ill. 2d 298, 303). We agree with the defendant that the evidence in this case was not sufficient to satisfy the taking element of the offense of armed robbery. There was no evidence that the property at issue – [the victim]'s car -- was ever taken from him. Although the Stricklands' actions certainly denied [the victim] a large measure of control over his vehicle and would have been sufficient to sustain a charge of intimidation (see Ill. Rev. Stat. 1985, ch. 38, par. 12-6), the automobile was never removed from [the victim's] actual possession. For these reasons, we conclude that the State failed to establish one of the elements of armed robbery, and the defendant's conviction for that offense must therefore be reversed."

Strickland, 154 Ill. 2d at 525-26.

In this respect, Strickland reviewed the armed robbery charge at issue in that case under the historical and common law roots of the offense of armed robbery, which included the understanding that completion of the offense involved removal of an item from the victim's possession. Strickland, 154 Ill. 2d at 525-26, citing People v. Smith, 78 Ill. 2d 298, 302-04 (1980) (holding the offense of armed robbery "is complete when force or threat of force causes the victim to part with possession or custody of property against his will"). But, for this very reason, McCarter should not have used the Strickland decision as its sole guide because that case concerned a different offense—armed robbery—and its analysis was driven, in large part, by the common law roots of armed robbery. See, *e.g.*, People v. Casey, 399 Ill. 374, 377 (1948) ("gist of the offense of robbery, both at common law and under the

statute of this State, is the force or intimidation employed in taking from the person of another, and against his will, property belonging to him or in his care, custody or control"), citing People v. Kubish, 357 Ill. 531 (1934); People v. Stathas, 356 Ill. 313 (1934); People v. Campbell, 234 Ill. 391, 393 (1908) ("While there must be an actual severance of the property from the person to constitute robbery, still the crime is consummated if the thief retains possession of the property but a short time. It is no less robbery because ineffectual in its consequences."), citing 24 Am. & Eng. Ency. of Law (2d ed.), p. 993.

Because vehicular hijacking does not share the same roots, serves a different purpose, and addresses different conduct than the crime of armed robbery, prior construction of the armed robbery statute should not control. See, *e.g.*, O'Donnell v. People, 224 Ill. 218, 226 (1906) ("It is a familiar rule of construction that when a statute uses words which have a definite and well known meaning at common law it will be presumed that the terms are used in the sense in which they were understood at common law, and will be so construed *unless it clearly appears that it was not so intended.*" (emphasis added.)). Moreover, the vehicular hijacking statute is not beholden to the same historical line of reasoning as robbery, as it was created in 1993, and meant to address "an offense of recent vintage," due to concerns about the increasing frequency of violent acts occurring as offenders were trying to steal vehicles. Public Act 88-351 (eff. Aug. 13, 1993). See 88th Ill. Gen. Assem., Sen. Proc., April 15, 1993, at 281-85; May 11, 1993, at 24-26; May 19, 1993, at 38-39. See also 88th Ill. Gen. Assem., House Proc., April 20, 1993, at 163-64, Comments by Rep. Novak ("This Bill is very similar to the one that passed out of the Senate that is now in the House. And it is also is stronger than the one that we have on the federal level because the federal carjacking Bill only applies if the defendant was armed with a firearm.").

Accordingly, the narrow construction of the term "takes" in the armed robbery

statute, while fully consistent with the common law understanding of robbery, should not be imported onto the new vehicle hijacking statute, which is not derived from the common law. Barthel v. Illinois Central Gulf R.R. Co., 74 Ill. 2d 213, 220 (1978) ("The rule in Illinois is that statutes in derogation of the common law are to be strictly construed in favor of persons sought to be subjected to their operation."). Lifting the analysis and holding from Strickland wholesale onto the vehicular hijacking statute results in absurdity, such that an actual hijacking or commandeering of a bus, as happened in this case, would fall outside the purview of the vehicular hijacking statute. See, *e.g.*, People v. Brown, 2013 IL 114196, ¶ 36 ("Each word, clause, and sentence of a statute must be given a reasonable meaning, if possible, and should not be rendered superfluous. The court may consider the reason for the law, the problems sought to be remedied, the purposes to be achieved, and the consequences of construing the statute one way or another. Also, a court presumes that the General Assembly, in its enactment of legislation, did not intend absurdity, inconvenience, or injustice.").

Under these circumstances, neither Strickland nor McCarter offers an appropriate analytical guide.

C. The Vehicular Hijacking Statute, Created To Deal With Crimes Involving The Taking Of Vehicles, Must Be Viewed Differently Than Typical Robbery Cases, As The Legislature Intended.

Notwithstanding the inapplicability of Strickland, the appellate majority here assumed that the legislature meant to rotely follow that decision when creating the vehicular hijacking statute. Applying the statutory maxim that the legislature was presumed to know this Court's holding in Strickland, the appellate majority assumed that the legislature was not only aware of Strickland, but intended to import its narrow construction of the term "takes" from the armed robbery statute into the newly created vehicular hijacking statute.

Reese, 2015 IL App (1st) 120654, ¶ 67. The appellate majority's assumption is not correct.

While this Court has stated that "'[w]here the legislature chooses not to amend a statute after a judicial construction, it will be presumed that it has acquiesced in the court's statement of the legislative intent,'" Zimmerman v. Village of Skokie, 183 Ill. 2d 30, 50 (1998), quoting Miller v. Lockett, 98 Ill. 2d 478, 483 (1983), this presumption is merely a jurisprudential principle and not a rule of law, People v. Perry, 224 Ill. 2d 312, 331 (2007). See also Pielet v. Pielet, 2012 IL 112064, ¶ 48 ("where, as here, the legislature has acquiesced in a judicial construction of the law over a substantial period of time, the court's construction actually becomes part of the fabric of the law, and a departure from that construction by the court would be tantamount to an amendment of the statute itself"). First, there has been no *substantial* period of time since McCarter was decided for the legislature to have "acquiesced" in that decision. And it certainly cannot be said that the legislature "acquiesced" in any way to Strickland's interpretation of the term "takes" as somehow controlling the vehicular hijacking statute. After all, the legislature did indeed amend the armed robbery statute after this Court's opinion in Strickland, and the legislature's decision to create a *new* offense entitled vehicular *hijacking* should be given significant weight.

The legislature clearly viewed the dangers of "carjackings" as different from other types of robberies, and thus created a separate vehicular hijacking statute, rather than simply leaving the armed robbery statute intact. 88th Ill. Gen. Assem., Senate Proceedings, April 15, 1993, at 281 (sponsor introducing bill, "[t]his is the carjacking legislation"). If the legislature had wanted court to apply the narrow construction of the word "takes" in Strickland to all robberies of vehicles, including the hijacking of vehicles, it could have simply left the armed robbery statute intact, or it could have added in the armed robbery statute an additional punishment for the robbery or armed robbery of vehicles. It did neither.

Instead, it created a new offense, intended to emulate the "carjacking" statutes in other jurisdictions. 88th Ill. Gen. Assem., House Proceedings, April 20, 1993, at 163-64. The fact that the legislature created a *new* offense, separate and apart from armed robbery, shows that both McCarter and the majority incorrectly reasoned that the legislature intended the word "takes" to have the exact meaning ascribed to the armed robbery statute.

Likewise, the appellate majority's assumption that the legislature, in creating the vehicular hijacking offense, wanted only to increase the penalty for the robbery of a vehicle is not borne out by what the legislature actually did. See Reese, 2015 IL App (1st) 120654, ¶¶ 61-62 (majority concluding that "the intent of the legislature in enacting the vehicular hijacking statute was to recognize the seriousness of taking a motor vehicle, versus taking another type of property, and increase the penalty for that offense accordingly"). As noted, if the legislature had meant to create an offense identical to the "robbery" or "armed robbery" of a vehicle, with the same construction of the word "takes" (per Strickland) band with a more severe penalty, there would have been no need to create the offense of vehicular hijacking--it would have simply enhanced the penalty in the armed robbery statute if a vehicle was the object taken.

The legislature's creation of the new offense of "vehicular hijacking" and not something like "armed robbery of a vehicle," is significant. While the legislature borrowed language from the robbery statute, the legislature was certainly aware of what "hijacking" meant when it created the vehicular hijacking statute. For instance, the legislature had previously and consistently considered a murder committed during the "hijacking of an airplane, train, ship, bus or other public conveyance" to be potentially punishable by death. 720 ILCS 5/9-1(b)(4) (West 2010); People v. Ballard, 206 Ill. 2d 151, 210-11 (2002) (noting that the aggravating factors which render a first degree murder death eligible, including that

the "victim was killed as a result of the hijacking of an airplane, train, ship, bus or other public conveyance"); People *ex rel.* Rice v. Cunningham, 61 Ill. 2d 353, 357 (1975) (same). As noted by the dissent, "one who commandeers and airplane in midflight is guilty of hijacking even though he has not forced the occupants to leave the plain in midair." Reese, 2015 IL App (1st) 120654, ¶ 149 (Palmer, J., dissenting).

In this respect, the majority also overlooked the fact that the vehicular hijacking statute deals exclusively with vehicles, which can be hijacked and thus are different than other possessions, like wallets, jewelry, and other similar items, that, to be "taken" during typical armed robberies, must be removed from the possession of the victim. The same is not necessarily true of automobiles or other motor vehicles. Because of the physical characteristics of an automobile, and its value and use as a means of transportation and thus more than just as an *object* of value to possess, an offender can commit vehicular hijacking by "taking" that vehicle away from a victim, or by the mere wresting of control from the victim. In the latter case, the offender can "use" the automobile for his or her own purposes, contrary to the victim's possession. This alone constitutes the taking, for purposes of aggravated vehicular hijacking, and is the classic example of a hijacking. In fact, the legislature's decision in 1993 to carve out of the armed robbery statute the taking of vehicles, and to then create the separate vehicular hijacking statutes, illustrates why the armed robbery statute cannot be the sole guide to the meaning of the term "takes." 720 ILCS 5/18-1(a) (West 2006) ("A person commits robbery when he or she takes property, except a motor vehicle ***."). See, *e.g.*, LaRue, 298 Ill. App. 3d at 91 ("armed robbery and aggravated vehicular hijacking statute are not substantially the same").

Moreover, nothing in the legislative history of the vehicular hijacking offense warrants the narrow reading ascribed by the majority. In the 1993 debates, one year after

Strickland, there is no mention of Strickland and there is no indication that the legislature intended to import Strickland's use of the term "takes" from the armed robbery statute into the newly-created vehicular hijacking statute. See 88th Ill. Gen. Assem., Sen. Proc., April 15, 1993, at 281-85; May 11, 1993, at 24-26; May 19, 1993, at 38-39. See also 88th Ill. Gen. Assem., House Proc., April 20, 1993, at 163-64, Comments by Rep. Novak ("This Bill *** is stronger than the one that we have on the federal level because the federal carjacking Bill only applies if the defendant was armed with a firearm."). On the contrary, the sponsor of the law called vehicular hijacking a "new genre of crime" and discussed the "tragedies around the country" of the various kinds of carjackings. 88th Ill. Gen. Assem., Sen. Proc., April 15, 1993, at 281. See also 88th Ill. Gen. Assem., House Proc., April 20, 1993, at 164 (Rep. Novak noting federal carjacking statute and stating, "we are all aware of the ...this particular category of crime that is occurring around the country" and discussing "horrendous situations that are occurring with tourists in Florida" and other "urban areas" in "the nation"). Moreover, the only mention of robbery was made in reference to the "immediate presence" element, when questions were raised as to whether the victim had to be in the car for the offense to occur. 88th Ill. Gen. Assem., Sen. Proc., April 15, 1993, at 283. As aptly noted by the dissent, while the legislators mentioned that the crime could include removing someone from their car,

> "the debates do not warrant the conclusion that removing a victim from a car is the only way in which a defendant can commit vehicular hijacking. To construe the statute as requiring the defendant to dispossess the victim of his car would have the effect of weakening and narrowing the scope of the statute, despite the legislature's clear concern with the danger and havoc that vehicular hijacking causes and its desire to send a strong message to would-be hijackers." Reese, 2015 IL App (1st) 120654, ¶ 150 (Palmer, J., dissenting).

Although the offenses of armed robbery and vehicular hijacking are similar in some regards, they are not identical. And while both use similar terminology, that fact, alone,

does not warrant the majority's overly narrow interpretation of the term "takes" in the vehicular hijacking statute. Contrary to the majority's belief, the word "takes" does not have to mean something different in the vehicular hijacking statutes. See Reese, 2015 IL App (1st) 120654, ¶ 68 ("we do not believe that the legislature's intent in creating the vehicular hijacking statute was to change the meaning of a word which had been previously defined by our supreme court"). Rather, the difference lies in the object "taken" and how one can "take" a vehicle during a hijacking without necessarily dispossessing the owner of the vehicle. Clearly, the legislature understood this and thus carved out of the armed robbery statute a separate offense for the "taking" or "hijacking" of motor vehicles. See Warren, 173 Ill. 2d at 357 ("In construing a statute, every part, including its title, must be considered together."); People v. Tellez, 295 Ill. App. 3d 639, 643 (2d Dist. 1998) ("In construing a statute, every part, including its title, must be considered together. Penal statutes are to be strictly construed in favor of the accused. However, they must not be construed so rigidly as to defeat the intent of the legislature. The judiciary has the authority to read into a statute language omitted through legislative oversight." (internal citation omitted)), citing People v. Parker, 123 Ill. 2d 204, 213 (1988), among other authorities.

Without question the Illinois legislature, like other jurisdictions in the early 1990s, was concerned with the dangers associated with recent increases in "carjackings," or vehicular hijackings. See, *e.g.*, Putting The Brakes On Carjacking Or Accelerating It? The Anti Car Theft Act Of 1992, 28 U. Rich. L. Rev. 385 (April 1994) (article discussing lead-up to passage of carjacking statutes). And the fact that the legislature included the "immediate presence" element discloses that the potential personal harm to victims, and not just the loss of property, was a preeminent concern. 720 ILCS 5/18-3(a) ("A person commits vehicular hijacking when he or she knowingly takes a motor vehicle from the person or the

immediate presence of another by the use of force or by threatening the imminent use of force"); People v. Cooksey, 309 Ill. App. 3d 839, 848-49 (1st Dist. 1999); People v. McGee, 326 Ill. App. 3d 165, 169-71 (3d Dist. 2001). See also 88th Ill. Gen. Assem., Senate Proceedings, April 15, 1993, at 283 (statement of Sen. Hawkinson, sponsor of the statute, that law was aimed at takings of vehicles while victim was in it or next to it and "you couldn't be in the store away from the car at the time"); 88th Ill. Gen. Assem., House Proc., April 12, 1993, at 20 (referring to vehicular hijacking as "not just the stealing of a car" but rather a "violent" crime). Without question, a victim remaining in the vehicle during the crime faces the greatest trauma and risk of harm.

Accordingly, the appellate court majority's refusal to acknowledge the danger to victims remaining in the vehicle, even at the wheel, during carjacking is puzzling. It is also contrary to the primary purpose of the statute—to acknowledge and punish more severely the more dangerous crime of vehicular hijacking—as acknowledged by the majority. See Reese, 2015 IL App (1st) 120654, ¶¶ 62, 66.

D. The Vehicular Hijacking Statute Is Akin To Carjacking Statutes From Other Jurisdictions, Which Uniformly Include The Commandeering Of A Vehicle And Do Not Require The Offender To "Dispossess" The Victim Of The Vehicle.

While the armed robbery statute may offer a close analog to the vehicular hijacking statute in other respects, its interpretation should not control this inquiry. Instead, similar statutes from other jurisdictions should inform this Court's interpretation of the vehicular hijacking statute. The Federal carjacking statute, for instance, was expressly referenced by Representative Novak in Illinois House debates during the passage of Illinois' vehicular hijacking statute. 88th Ill. Gen. Assem., House Proceedings, April 20, 1993, at 163-64. The federal statute, like our State counterpart, also defines the offense in terms of a "taking." 18

U.S.C. § 2119 ("[w]hoever, with the intent to cause death or serious bodily harm[,] takes a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce from the person or presence of another by force and violence or by intimidation, or attempts to do so ***"). Federal courts correctly recognize that the offense can be committed and complete without having to actually "take away" or "dispossess" the victim of the vehicle. See United States v. Figueroa-Cartagena, 612 F.3d 69, 75 (1st Cir. 2010) ("when a carjacking victim is taken hostage, the commission of [the] carjacking continues at least while the carjacker maintains control over the victim and [his or] her car"); United States v. Gurule, 461 F.3d 1238 (10th Cir. 2006) (upholding conviction of defendant who forced victim, at knifepoint, to drive her car while he crouched in back seat); United States v. DeLaCorte, 113 F.3d 154, 156 (9th Cir. 1997) (taking element means gaining control of automobile rather than unduly restrictive interpretation of dispossessing victim of vehicle).

The appellate majority's attempt to distinguish the federal statute on the basis that it is "broader," insofar as it provides for both attempted carjackings, as well as actual carjackings, does not withstand scrutiny. See Reese, 2015 IL App (1st) 120654, ¶ 72. DeLaCorte, for instance, interpreted the term "taking" without reference to the attempt language, and determined that "an interpretation of 'taking' under 18 U.S.C. § 2119 that requires the physical relinquishment of a vehicle is unduly restrictive. Such an interpretation ignores the fact that a defendant can take control of a vehicle from its owner even though the victim remains in the car and continues to drive it." 113 F.3d at 156. As further noted by the Ninth Circuit, a restrictive reading of the term "takes" would place the most dangerous behavior beyond the statute's reach:

> "Section 2119 specifies that crucial elements of carjacking are 'force and violence' and 'intimidation.' 18 U.S.C. § 2119. A victim who is forced to remain in the car with his assailant, subject to the assailant's continuing threats and possible

> violence, will often experience more prolonged and severe intimidation and be placed in greater danger than a victim who is immediately released. DeLaCorte's interpretation of the 'taking' element of § 2119 would result in a definition of carjacking that does not adequately address the 'intimidation' and 'violence' elements of the statute."

113 F.3d at 156.

The federal courts' more rational and logical understanding of the term "taking" is shared by a majority of states. See Williams v. State, 990 So. 2d 1122, 1123 (Fla. App. 2008) (affirming conviction for carjacking, defined as taking a motor vehicle from person or custody of another, where offender jumped into victims' vehicles and ordered them to drive; a defendant "need not be in physical control of the vehicle" but instead need only obtain control over driver through force or violence, threats, or placing driver in fear); People v. Duran, 106 Cal. Rptr. 2d 812, 816 (Cal. App. 2001) ("taking" occurred, even though victims remained in car, when defendant imposed dominion and control over car by ordering victim to drive at gunpoint); Bruce v. State, 555 S.E.2d 819, 822-23 (Ga. App. 2001) (affirming conviction for hijacking motor vehicle where offender ordered cab driver to drive him at knifepoint; concept of "obtaining" a motor vehicle encompassed acquiring control of vehicle regardless of whether victim remained inside vehicle); People v. Green, 580 N.W.2d 444, 450 (Mich. App. 1998) (victim need not be physically separated from a vehicle for defendant to "take" victim's car); Winstead v. United States, 809 A.2d 607, 609, 611 (D.C. 2002) (offender took "immediate actual possession" of victim's car when, after ordering victim to get into car, offender ordered her to drive at gunpoint; "[w]hile [victim] remained at the wheel, it was [offender] who directed her movements and usurped actual physical control of the vehicle. It was no less a carjacking because [offender] took his victim along with the car."). But see Allen v. State, 875 N.E.2d 783, 786-87 (Ind. App. 2007), citing

Burton v. State, 706 N.E.2d 568, 569 (Ind. App. 1999).[5]

These points were ably made by the dissenting Justice in this case. See Reese, 2015 IL App (1st) 120654, ¶¶ 146-48 (Palmer, J., concurring in part and dissenting in part). In fact, the dissenting opinion offers the better-reasoned analysis in large part because of its acknowledgment that the Illinois legislature passed the vehicular hijacking statute with a recognition of the *new* crime of carjacking, and not simply in derogation of the statutory and common law crime of robbery. Because the legislature was looking to other jurisdictions (in particular the federal carjacking statute) when crafting Illinois' vehicular hijacking provision, it is wholly reasonable to view those other statutes as the more appropriate guide to the interpretation of Illinois' vehicular hijacking statute. Indeed, this Court has often looked to other jurisdictions to interpret Illinois legislation. See, *e.g.*, Smith, 78 Ill. 2d at 303 (looking to out-of-state and federal interpretation of robbery statutes as guides to interpretation of Illinois robbery statute).

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[5] The construction given by Indiana to its own carjacking statute is due, in part, to the relationship between that offense and kidnapping. Burton, 706 N.E.2d at 569 (referring to fact that kidnapping statute "requires the State to prove that the defendant used force or threats to keep the occupant inside the vehicle against his or her will"), citing Burns Ind. Code Ann. 35-42-3-2(b)(3)(B) (2016) (kidnapping committed "while hijacking a vehicle" is "level 2 felony"). As noted by Burton, carjacking "requires the taking of a vehicle from a person or from the presence of a person. This language specifically contemplates that the person who takes the vehicle leaves the person from whom the vehicle is taken at the scene. If the occupant remains in the vehicle being taken, there is no crime of carjacking[; it is instead a kidnapping]. If the occupant is left behind, there is no crime of kidnapping[; it is instead a carjacking]." Burton, 706 N.E.2d at 569. Illinois law has no such relationship between vehicular hijacking and aggravated kidnapping (720 ILCS 5/10-2), and thus there is no legal or logical impediment to reading the vehicular hijacking statute to encompass the situation where the victim remains in the vehicle.

E. The Fact That The Appellate Majority Had To Deviate From Strickland's Narrow Interpretation Of The Term "Taking" In Order To Avoid The Potential For Absurd Results In The Vehicular Hijacking Statute Proves That Neither Strickland Nor The Armed Robbery Statute Should Control In This Inquiry.

The appellate majority criticized the State and the dissenting Justice for looking to out-of-state and federal cases because, according to the majority, the question here is not "a matter of first impression." See Reese, 2015 IL App (1st) 120654, ¶ 70 ("[w]here we have clear precedent from Illinois courts interpreting an Illinois statute, we do not believe it is necessary or appropriate to look to foreign authority to second-guess our own interpretation"). Believing that Strickland's interpretation of the armed robbery statute was controlling and thus settled the question of that term's meaning in the vehicular hijacking statute, the majority rejected these other authorities' analysis as to the taking element because Strickland "explicitly rejected" it. Reese, 2015 IL App (1st) 120654, ¶¶ 71, 74.

Nevertheless, even the appellate majority acknowledged that importing Strickland's narrow construction of the term "takes" into the vehicular hijacking statute might engender absurd results, and thus appeared to slightly back away from that construction. See Reese, 2015 IL App (1st) 120654, ¶ 69 (stating that it was not holding that the vehicular hijacking statute "requires a defendant to actually remove the victim from his vehicle"). No doubt aware of the irrationality of requiring that the victim be *entirely* removed from the vehicle, the majority maintained that a defendant must still "dispossess" the victim of his property; this, according to the majority, did not happen here when defendant commandeered the bus. Reese, 2015 IL App (1st) 120654, ¶ 69. But the majority did not draw any line between dispossessing a victim of a vehicle (vehicular hijacking) and merely taking control of a vehicle from a victim by forcing that victim to drive (not vehicular hijacking). Instead, the majority relegated this question to a future, fact-based inquiry, leaving the state of the law

uncertain as to the proper interpretation of this statute. Id. ("[T]here are undoubtedly circumstances in which a defendant can 'take' a vehicle from a victim while the victim still remains inside. However, the determination of whether a victim has been dispossessed is a fact-specific inquiry, which turns on the particular circumstances of each case.").

The majority's concession ultimately does not fix the problem, but only adds confusion, making it unclear as to how, specifically, a defendant would "dispossess" a victim of a vehicle, or "take" that vehicle away from the victim, other than by completely removing the victim from the vehicle. *Cf.* Bradford, 2016 IL 118674, ¶ 26 (discussing burglary statute and noting that "under the State's reading, adopted by the appellate court below, it is not clear what evidence would be sufficient to establish that a defendant 'remains' within a public plain in order to commit a theft"). Moreover, the appellate majority's concession appears to deviate from this Court's suggestion in Strickland that the victim must be actually removed from, or dispossessed of, the vehicle, in order for a robbery "taking" to occur:

> "We agree with the defendant that the evidence in this case was not sufficient to satisfy the taking element of the offense of armed robbery. There was no evidence that the property at issue – [the victim's] car -- was ever ***taken from him***. Although the Stricklands' actions certainly denied [the victim] a large measure of control over his vehicle and would have been sufficient to sustain a charge of intimidation (see Ill. Rev. Stat. 1985, ch. 38, par. 12-6), ***the automobile was never removed from [the victim's] actual possession***. For these reasons, we conclude that the State failed to establish one of the elements of armed robbery, and the defendant's conviction for that offense must therefore be reversed." (Emphasis added.)

Strickland, 154 Ill. 2d at 526. If Strickland's interpretation of the term "takes" does indeed "control," as the majority believed, then the only way to "take" a vehicle, per Strickland, is to remove it from the victim's actual possession by taking it "from him." But even the majority did not read the term "takes" this narrowly for purposes of the vehicular hijacking statute. Instead, it created a nebulous middle ground unsupported by

either Strickland or the vehicular hijacking statute.

Significantly, the fact that the majority needed to make this concession in the case of a vehicular hijacking actually proves how Strickland's analysis of the armed robbery statute should never have been the sole analytical guide on the meaning of the word "takes" in the vehicular hijacking statute. The need for deviation from Strickland should have suggested to the majority that Strickland did not "compel" any result here, and that thus, at the very least, McCarter was wrong to follow Strickland. See, *e.g.*, McCarter, 2011 IL App (1st) 092864, ¶¶ 78-79 (stating it was "compelled" to find that there was no vehicular hijacking because victim was never "dispossessed of his car"), citing Strickland, 154 Ill. 2d at 525-26 (armed robbery "is complete when force or threat of force causes the victim to part with possession or custody of property against his will"). Certainly, if the appellate majority had reason to depart from the holding in Strickland in order to avoid an absurd result in the vehicular hijacking statute, then Strickland's analysis of the armed robbery statute should not have controlled construction of the vehicular hijacking statute.

In sum, both the majority's and McCarter's reliance on Strickland, and their resulting interpretation of the vehicular hijacking statute in lockstep with the armed robbery statute, should be rejected where it results in either confusion or absurdity. Instead, the vehicular hijacking statute should be analyzed on its own terms. And it should, consistent with its plain language and the legislative intent behind its passage, encompass cases such as this one where the offender forces the victim to drive the vehicle under physical threat. That is the most rational interpretation, consistent with the legislature's intent in enacting the statute, and in accord with the majority of the jurisdictions dealing with this specific type of crime.

CONCLUSION

The People of the State of Illinois respectfully request that this Honorable Court reverse the Appellate Court's judgment, in part, and affirm defendant's conviction for aggravated vehicular hijacking.

Respectfully Submitted,

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APPENDIX TO THE BRIEF

APPENDIX

TABLE OF CONTENTS

INDEX TO THE RECORD

Common Law Record ("C") **Page**

Supplemental Exhibits

Volume 1 of 2

Peo. Exh. 21, photo of long metal pointed shank, wrapped with fabric twisted as a handle around it.

Volume 2 of 2

Peo. Exh. 31, 32, photos of victim, scratches on neck below chin
Peo. Exh. 33, photo of victim, puncture by left ear on neck
Peo. Exh. 35, 36, 37, 38, photos of victim, long scratches and incise wounds on the left of face, above ear, 3 inches long
Peo. Exh. 39, photo of victim, puncture wound to front chest
Peo. Exh. 41, photo of victim, puncture wound to left forearm
Peo. Exh. 45, photo of victim, puncture wound below left ear
Peo. Exh. 46 photo of victim, puncture wound back of neck
Peo. Exh. 48, video of stairwell, showing defendant running down stairs and out the door with others following behind, date and time stamped: 3-22-07, 13:12:40

Report of Proceedings ("R")

Volume 1 of 7

April 22, 2008	
Continuance	O3
May 19, 2008	
Continuance	P3
June 18, 2008	
Continuance	Q3
July 17, 2008	
Continuance	R3
August 27, 2008	
Continuance	S3
October 27, 2008	
Discovery Tendered, Defendant Confirms Proceeding Pro Se, Continuance	U3
November 21, 2008	
Continuance	V3
November 25, 2008	
Discovery Tendered, Continuance	W3
December 19, 2008	
Continuance	X3
January 2, 2009	
Continuance	Y3
January 20, 2009	
Defendant Requests Removal of Restraints, Continuance	Z3-7

Volume 2 of 7

July 14, 2010	
Continuance	VV3
August 18, 2010	
Continuance	WW3
September 13, 2010	
Continuance	XX3
September 27, 2010	
Continuance	YY3
October 15, 2010	
Continuance	AAA3
November 15, 2010	
Continuance	BBB3
December 13, 2010	
Continuance	CCC3
January 7, 2011	
Continuance	DDD3
February 4, 2011	
Continuance	EEE3
February 7, 2011	
Continuance	FFF3
March 10, 2011	
Continuance	GGG3

Jury Questions & Court Responses	TTT114-34
Verdict of Guilt	TTT135
Jury Polled	TTT135
Court Declares Mistrial on Aggravated Kidnapping Count	TTT138
Court Orders Bail Revoked, PSI	TTT138
Attorney Appointed for Defendant, for post-trial motions	TTT138
November 22, 2011	
Continuance	UUU3
December 15, 2011	
Arguments on Defense Motion for New Trial	
Ms. Washlow (Defense Counsel)	VVV6
Mr. Varga (State)	VVV7
Ms. Washlow	VVV10
Defense Motion for New Trial - Denied	VVV12
January 27, 2012	
Sentencing Hearing	
Defendant denies his name and insists he is Franklin D. Roosevelt, Defense counsel notifies court that defendant denies everything in the PSI, giving different birthdate and requesting to see psychiatrist, Court denies request	WWW3
Defendant removed from courtroom for outburst	WWW4

Witnesses in Aggravation

	Direct	Cross	Redir.	Recr.
ASA Jenni Scheck	WWW6			

Ofc. Angel Garcia[1]

Argument in Aggravation	WWW14
Argument in Mitigation	WWW18
Defendant Statement in Allocution	WWW30
Imposition of Sentence	WWW56

February 17, 2012

Motion to Reconsider Sentence - Denied	XXX3

Supplemental Report of Proceedings ("R. Supp.")

October 7, 2008

Defendant Elects, Admonished, and Allowed to Proceed *Pro Se*	4-18

[1] The People obtained an affidavit from the court reporter indicating that the transcript provided in the record on appeal for this date is incomplete, due to a malfunction in the transcription device, and thus Ofc. Garcia's testimony is not included; although his testimony at sentencing is referenced in other portions of the record.

Illinois Official Reports

Appellate Court

***People v. Reese*, 2015 IL App (1st) 120654**

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. WILLIS REESE, Defendant-Appellant.
District & No.	First District, Fourth Division Docket No. 1-12-0654
Filed	September 24, 2015
Decision Under Review	Appeal from the Circuit Court of Cook County, No. 07-CR-8683; the Hon. Kenneth J. Wadas, Judge, presiding.
Judgment	Reversed in part, affirmed in part, and modified in part.
Counsel on Appeal	Michael J. Pelletier, Alan D. Goldberg, and David T. Harris, all of State Appellate Defender's Office, of Chicago, for appellant. Anita M. Alvarez, State's Attorney, of Chicago (Alan J. Spellberg, Michelle Katz, and Annette Collins, Assistant State's Attorneys, of counsel), for the People.
Panel	PRESIDING JUSTICE McBRIDE delivered the judgment of the court, with opinion. Justice Gordon concurred in the judgment and opinion. Justice Palmer specially concurred in part and dissented in part, with opinion.

OPINION

¶ 1 Following trial, a jury found defendant, Willis Reese, guilty of aggravated vehicular hijacking, vehicular invasion, attempted armed robbery, and escape. The trial court subsequently sentenced him to concurrent extended-term sentences of, respectively, 50, 30, 30, and 14 years in prison, to be served consecutively to the natural life sentence defendant was serving on a prior murder conviction. Defendant appeals, arguing (1) the State failed to prove him guilty of aggravated vehicular hijacking, as it failed to show that he dispossessed the victim of the bus, (2) the State failed to prove him guilty of vehicular invasion, as it failed to show he used force to enter the bus, (3) a fatal variance existed between his attempted armed robbery indictment and conviction, (4) he was deprived of due process when he was shackled during jury selection without the trial court articulating the reasons for his shackling, (5) the State introduced excessive and irrelevant details regarding his prior murder conviction, (6) the trial court failed to comply with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984), thereby rendering his waiver of counsel invalid, (7) the court erroneously imposed extended-term sentences on offenses that were not among the most serious class of felony, and (8) his convictions for both aggravated vehicular hijacking and vehicular invasion violate the one-act, one-crime doctrine.

¶ 2 For the following reasons, we reverse defendant's conviction and sentence for aggravated vehicular hijacking, and affirm his convictions for vehicular invasion, attempted armed robbery, and escape. We affirm defendant's 30-year sentences for vehicular invasion and attempted armed robbery, and reduce his sentence for escape to 7 years.

¶ 3 ### I. BACKGROUND

¶ 4 On March 19, 2007, a jury found defendant guilty of first-degree murder. Three days later, before he was sentenced for that offense, defendant was taken to an appointment at Stroger Hospital (Stroger). Following his appointment, defendant went into a restroom, removed a shank he had hidden in his shoe, and fled the building, injuring several people during his escape. Based on the events that transpired that day, the grand jury returned an indictment charging defendant with, among other offenses, aggravated vehicular hijacking, vehicular invasion, attempted armed robbery, escape, disarming a peace officer, and aggravated kidnapping. The indictment also charged him with multiple counts of attempted first-degree murder, which the State later nol-prossed.

¶ 5 #### A. Pretrial Proceedings

¶ 6 The public defender was appointed to represent defendant, and, in October 2008, defendant told the trial court that he wished to "exercise [his] constitutional right" to proceed *pro se*. He expressed dissatisfaction with the public defender's office and stated he was making his "decision knowingly and intelligently." The court advised defendant that two of his attempted first-degree murder counts alone carried 20- to 80-year prison sentences and possible extended-term sentences of 40 to 160 years' imprisonment. The court stated, "Basically, you are looking at massive time if you are convicted." Defendant indicated that he understood. The court then advised defendant of the normal and extended-term sentences that Class 1, Class 2, Class 3, and Class X felonies carried. When asked whether he understood the penalties and sentencing ranges, defendant responded, "Perfectly, Your

Honor, perfectly." The court did not admonish defendant that any possible sentence in his case would run consecutively to the sentence he was serving on his murder conviction. After completing its admonishments, the court permitted the public defender to withdraw.

¶ 7 B. Jury Selection and The State's Motions *In Limine*

¶ 8 In November 2011, the parties appeared before the trial court for jury selection. Defendant indicated he was "ready to change into [his] clothes and get out of [his] shackles" so he could "prepare [his] paper work." The court started to explain the *voir dire* procedure, and defendant stated, "I mean I would like to write this stuff down. This is just not good right now. I want to write what you're saying down. So if you would say it again later on that would be fine, too." The court told defendant that "[l]ater on," his hands would be free and both tables would be covered with drapery so that the jurors would not be able to see defendant's leg shackles. The following exchange then occurred.

"THE DEFENDANT: But won't they be able to hear?

THE COURT: I guess if you move your legs around a lot.

THE DEFENDANT: Yeah. And I am a human being so that's a big possibility that would happen. Also–I mean the shackles why do they need to stay on at this particular portion of trial?

THE COURT: I will leave it at their discretion. I am not going to order them to take–

THE DEFENDANT: They take them off with other people. I've shown you approximately a year and a half ago that I can handle myself without being shackled when I argued the motion between [the assistant State's Attorneys]. I didn't have shackles then.

THE COURT: You are preaching to the choir. All you have to do is talk to the men in charge. If you can convince those three men that you don't need leg shackles, you don't have to have them on.

THE DEFENDANT: My point is I didn't have to convince them the first time you did it. But it's fine. We can do it that way this time."

¶ 9 After the trial court further explained *voir dire* to defendant and a recess took place, defendant again brought up his shackles. The following exchange took place.

"THE DEFENDANT: Judge, one thing before we get started, and I don't mean to bring this back up and be difficult. But it's a very big problem. Will this be the case these shackles. When the jury come[s] in here, when trial officially starts, will I still be confined to this?

THE COURT: That's up to the Illinois Department of Corrections.

THE DEFENDANT: Judge, the Illinois Department of Corrections is not on trial. You see what I am saying. They're not on trial. Their constitutional rights are not being violated. And so they could care less. They have a system that they run down there. The only way they are going to come off is by court order."

Defendant told the court, "I will give you my word if I so much as step in the wrong direction, I will willingly put these back on. But I am here to do a thorough job, and I can not work under these conditions." The court indicated it would take the matter under consideration and make a decision the next day.

¶ 10 Later, jury selection commenced. The first panel of six potential jurors consisted of Tiffany Fourkas, Danielle Quinn, Alvin Hunt, Aaron Perry, Quinn McSorley, and Melissa Myles.[1] When asked whether he accepted the panel of Fourkas, Quinn, Perry, and McSorley, defendant stated, "No, I don't accept three individuals." The court asked defendant who he would not accept, and he indicated Fourkas. He then asked if the trial court could "possibly have him dismissed for a moment" because an "issue" was "going on" and he did not think the court "would want" the jurors to hear about it. The court asked whether defendant was only dismissing Fourkas, and defendant stated "Here's the thing, sir. Our reason for having these drapes here, what was our reason for having these drapes?" After the court dismissed the prospective jurors, defendant explained that Fourkas, McSorley, and Myles were "all sitting on this side here. And if you notice this little area right here is completely open. And it basically defeats the purpose of you having this drape up on the table. They saw me with the shackles on. If they saw me with the shackles on, then we might as well not have the drapes up." The court asked defendant which people saw the shackles, and defendant stated Fourkas and McSorley.

¶ 11 The trial court asked that Fourkas and McSorley be brought back into the courtroom separately. Upon questioning, Fourkas said she could not see behind the drapes. Nonetheless, defendant exercised a peremptory challenge to remove Fourkas.

¶ 12 The trial court then questioned McSorley, who indicated he could see behind the drapery and saw "a little belt on [defendant]'s strap between his feet." He denied that what he saw would affect his ability to be fair. Defendant then asked the following questions, and McSorley provided the following responses.

"Q. Does this [the shackles] mean anything of significance to you?

A. No.

Q. Not at all. Does it give you the impression that I can not control myself?

A. No, not at all.

Q. Are you sure about that?

A. Yes.

Q. So when you see a man with shackles on his feet, what do you think. Tell me the first thing that came to your mind.

A. What?

Q. Tell me the first thing that came to your mind when you saw these shackles on my ankles?

A. I knew you were being supervised by these two patrol men.

Q. That's a problem in itself. Okay. I won't strike."

The other members of the panel returned to the courtroom, and the court asked whether anything about defendant's appearance would affect their ability to be fair. The court explained that it was referring to "[h]is appearance with this drapery in front of him." Quinn stated, "No I guess" and asked whether there was "something we should know that we don't know because now I am confused." The court said there was nothing the jury should know.

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[1]The State excused Hunt, who said he had just gotten off of probation and was "kind of on the fence" about his ability to be fair.

The record does not contain a response from any of the other potential jurors. The parties accepted the panel of Myles, Perry, Quinn, and McSorley.

¶ 13 At the conclusion of *voir dire*, the trial court addressed the State's motions to introduce defendant's prior murder conviction. The State sought to use the conviction as evidence of defendant's motive to escape as well as for impeachment purposes. The State also filed a motion *in limine* to present a certified copy of the charging instrument from defendant's prior murder conviction. The State explained that it wanted to "prove up that defendant was convicted three days before the incident and to introduce evidence of the potential sentence he was facing in so far as it relates to motive." The trial court ruled that the State could not present that information in its case-in-chief but could use defendant's prior conviction for impeachment if defendant testified. The court instructed defendant as follows. "[S]hould you testify and testify in a way that that could be used to impeach you, then of course I will allow the State to introduce that certified copy of conviction, cross examine you on the fact that you were convicted of murder. You knew you were facing a heavy sentence, et cetera, as a motive to escape." The court also ruled that, with respect to the escape count, the State could say only that defendant "was in custody on felony charges." Before the proceedings ended, defendant asked the court if it would "please remember to consider the shackle situation" for trial. The court asked the Department of Corrections (DOC) officer about the shackles, who responded, "We keep them on unless you order them off." The court then stated as follows. "I am inclined to let him have–to be taken off when he–people usually like to stand when they give their argument and move around a little bit. So I'll sign that order tomorrow and you can take the shackles off. And he will have a little more freedom."

¶ 14 C. Trial

¶ 15 On the first day of trial, the trial court ordered that defendant's shackles be removed during trial. Thereafter, the parties presented the following evidence.

¶ 16 Cook County sheriff's officer Vito Zaccaro testified that he was working in the external operations unit at Stroger at around 1 p.m. on March 22, 2007. Zaccaro met and received defendant at the front of the hospital. Defendant was an inmate at the Cook County jail and was wearing a DOC uniform, handcuffs, and leg shackles. Zaccaro transported defendant to the dermatology clinic on the second floor of the hospital.

¶ 17 During his 10- or 15-minute appointment, defendant repeatedly asked to use the restroom. When his appointment finished, Zaccaro took defendant to a single-occupancy restroom in a hallway, removing his handcuffs but not his shackles. Zaccaro then waited outside the restroom, leaving the door "open about a crack" so that he could see defendant. After about 10 minutes, Zaccaro heard a toilet flush. When defendant came out of the restroom, Zaccaro told him to put his hands out so that he could place him back in handcuffs. Defendant jumped to the side with a silver metal weapon, held the weapon to Zaccaro's neck, and said, "Move or I'll cut you." Zaccaro then felt defendant's "hand going down the right side" of Zaccaro's body as though he was reaching for Zaccaro's gun. Zaccaro threw his arms up to prevent defendant from taking the gun, and defendant stabbed him in the neck. Zaccaro tripped over defendant's shackles, and they both fell to the ground.

¶ 18 Defendant got up and started to run away. Zaccaro hit the "panic button" on his radio to signal an emergency and started to pursue defendant through the "maze" of hallways. As defendant ran, he continued to swing the weapon in his hand. Eventually, he ran through an

emergency stairwell and exited the hospital. Zaccaro followed and observed defendant run onto a shuttle bus. When Zaccaro attempted to enter the bus, "the door slammed" on him. The bus proceeded around the circular driveway, made an "unusual maneuver," and "just kind of stopped and went into a wall." A door opened and defendant exited the bus, at which point Zaccaro believed that hospital police officers tackled him to the ground.

¶ 19 On cross-examination, defendant asked Zaccaro if he had handcuff keys on his belt, and Zaccaro responded that he did. Zaccaro also acknowledged that defendant never made a verbal demand for Zaccaro's weapon.

¶ 20 Victoria Hill, a nurse at Stroger, testified that she was treating a patient named James Holman at around 1:45 p.m. on March 22. As she was treating Holman, Hill heard "bumping" outside of the examination room. She opened the door and saw defendant and a sheriff in the restroom across the hallway, struggling with each other. The sheriff had a gun in his holster and appeared to be trying to hold defendant from "getting his gun or something or getting away." Hill started screaming and ran to the nursing station down the hall. After calling the police, Hill waited at the nursing station and saw defendant run past her out the door. Hill started running behind the sheriff who was chasing defendant, yelling "Stop him, stop him." Hill's coworker, Nestor Francia, tried to stop defendant. Hill proceeded down the stairwell and observed defendant exit the building and run to a shuttle bus.

¶ 21 Nestor Francia testified that while he was assisting a patient in the dermatology clinic, he heard Victoria Hill saying, "don't let him get away." Francia then observed a man in a "scrub" uniform and shackles running toward the door. Francia chased the man and attempted to grab him by his pants. The man then turned around to face Francia, swung his hand, and stabbed Francia in the left arm near his wrist bone. Afterward, the man continued running away and Francia returned to the clinic area. Francia was unable to identify defendant at trial, but he agreed that he had identified a photograph of defendant on March 26, 2007.

¶ 22 James Holman testified that he was receiving treatment from Hill at the Stroger dermatology clinic when he heard "some knocking and banging" outside the room. Afterward, he heard a male's voice yelling for help. Hill opened the door and said, "oh, my God, help, help, help." Holman looked out the door and saw defendant and a police officer fighting near the bathroom across the hall. The inmate was trying to grab whatever the police officer was protecting on his right side. Holman ran into defendant and the officer to break up their fight, knocking defendant toward the bathroom sink and knocking the officer into the hallway wall. Defendant hit Holman in the face and eye, and Holman felt "metal." Holman continued approaching defendant, but eventually defendant "took off," running down the hallway in the opposite direction of the officer, who was getting up from the ground. The officer followed defendant, and Holman lost sight of him. Holman sustained three stab wounds and underwent surgery for an injury involving his eye.

¶ 23 On cross-examination, Holman acknowledged that he did not see defendant going for the officer's weapon. Defendant asked whether it was possible that he "was going for something to take off the shackles?" Holman responded, "No," explaining it looked as if defendant were "forcefully taking something."

¶ 24 James Rimmer was driving a shuttle bus between Stroger and a nearby parking lot. He was waiting in the driver's seat of the bus, with the doors open, outside one of the main hospital entrances at around 1:45 p.m. on March 22. An inmate in a jail uniform, whose face

Rimmer was not able to clearly see, entered the bus, held his right hand in front of Rimmer, and said, "Drive. If you stop, I'm gonna stab you in the neck." Rimmer could see an object in the inmate's hand. Rimmer closed the door, put the bus in drive, and attempted to drive out of the lot.

¶ 25 However, a car was blocking the parking lot entrance. Rimmer got the idea to reach over to a lever which opened the bus door, because he knew that doing so would cause the brakes to "lock up." He testified that "if you're standing up and I throw my door open, you automatically go forward, so it [gave] me a chance to get out of the situation I was in." Rimmer opened the door, the inmate "went forward," and Rimmer grabbed the inmate's right arm. The two started wrestling, and the inmate stabbed Rimmer twice on the left side of his face and once in the chest. Rimmer acknowledged that the inmate did not touch him until Rimmer grabbed him, and that the inmate never got behind the wheel of the bus. Rimmer testified that the "whole struggle" lasted about 10 or 15 seconds, and then the inmate broke free and ran out the bus door. He ran about five or six feet away before a security guard tackled him.

¶ 26 Sharon Jambrosek testified that she was sitting on the shuttle bus in the seat behind the shuttle bus driver when an inmate entered and told the bus driver to "drive, mother f***, drive." The bus driver started to drive before stopping quickly behind a parked car. The inmate made a forward motion with his fist and appeared to be stabbing the driver. Jambrosek went toward the back of the bus for her safety, and did not remember much from that point on. She did not see the bus driver and the inmate "rassling" or the inmate exiting the bus. Jambrosek also acknowledged that she never saw the inmate's face.

¶ 27 Sergeant Gregory Hardin, an investigator at the Cook County Hospital, testified that he was working on the first floor of Stroger when he received a call over his radio that an escaped prisoner was running down the stairwell from the second floor. Hardin and two or three other officers ran outside, where people directed him toward the shuttle bus, which was driving around the cul-de-sac area. Hardin and the other officers ran toward the bus. After the bus stopped, Hardin saw defendant raising his hand in a fist, striking the bus driver. Hardin ran to the front door of the bus but could not open it, so he ran to the back door and eventually was able to enter. Defendant turned around and came toward him, making a forward thrusting motion with his right hand. Hardin ordered him to stop and get down, and defendant started walking toward the front of the bus. Additional officers entered the bus, removed defendant, put him on the ground, and placed him in handcuffs.

¶ 28 Sergeant William Villasana of the John Stroger Hospital Police Department testified that he learned via his police radio of a "scuffle" involving a corrections officer. Villasana ran to the second floor, where people directed him to the stairs. He proceeded outside the main entrance and saw a police officer lying on the ground. When he reached the bus, he entered through the back door and saw the bus driver, who was bleeding from the neck. He then exited the bus. By the time he reached the inmate, other officers had already apprehended him. Villasana could not identify defendant in court but knew the person that was

apprehended was wearing a DOC uniform. After bringing the inmate inside, Villasana went back outside near the bus and found a shank or piece of steel wrapped with cloth.[2]

¶ 29 Joe Dugandzic, an investigator with the Cook County sheriff's police department, testified that on March 22, he was assigned to investigate an attempted escape at Stroger Hospital. He later met defendant at the jail. He initially testified that he did not speak to defendant. However, Dugandzic later testified that before the grand jury, upon being asked whether defendant voluntarily told him anything, Dugandzic responded, "At first, no, and then a couple of minutes later he stated I had to do what I had to do. If somebody got hurt, oh well. He said I wanted out and if anything got in my way, I would have done whatever it took." Defendant did not make his statements during a formal interview.

¶ 30 Following the conclusion of the State's case-in-chief, defendant made a motion for directed finding in which he admitted he "was trying to escape" but asserted the State had failed to prove the charges of vehicular hijacking, vehicular invasion, attempted armed robbery, or disarming a peace officer. The court denied defendant's motion.

¶ 31 Before defendant testified, the trial court admonished him outside of the presence of the jury that if he chose to testify, he would be cross-examined by the State, who could use his 2007 murder conviction against him to impeach his credibility. The court further explained that the State in rebuttal would be able to introduce the certified copy of defendant's conviction. Defendant asked, "how far does that play out?" The court responded that the State would not be able to talk about the facts of the conviction and would only be able to "read in [defendant] on or about, so and so was convicted of the offense of first degree murder." The State indicated that depending on the justification or defense that defendant set forth while testifying, it might ask the court to revisit its earlier motion seeking to introduce the potential sentence defendant faced, insofar as it related to his motive to escape. The court stated that if defendant testified regarding a "necessity" defense, the State would be able to cross-examine him and rebut his motive with his murder case.

¶ 32 Defendant chose to testify on his own behalf. During his testimony, he stated as follows.

> "Now, when it comes to, because I know you guys want to know, you know, have I been convicted? Yes. What was I convicted for? Murder, 4 years ago. Did I do it? Honestly not from the bottom of my heart with everything in me no, I did not. Am I in jail for it? Yes, I am. And as you guys know, there's many people down in prison that says this, you know, but all I have is my word up here. I've sworn to be honest with you guys. That's all I have. I done [*sic*] have anything else. And I did not take the life of anyone, including the person that I'm in prison for right now. And I'm still in the process of clearing my name.
>
> Now when it comes to how I ended up being in prison, it's a long story but, I'll modify it by saying I was very young, extremely young. I was a kid 17 years old. I was manipulated by officers and through that manipulation put me in a position to be further taken down the line of going to prison.
>
> When it comes to what I learned out of this situation, I learned you should never be so naïve as to trust a person because they wear a badge. It's that simple. And

[2]Forensic testing of the metal item that was recovered, as well as Zaccaro's firearm, revealed no fingerprints suitable for comparison. Deoxyribonucleic acid (DNA) testing indicated defendant could not be excluded as the source of the mixture of DNA profiles found on the shank's cloth.

another thing I learned from that situation that's why I was trying to stress so hard earlier that I would never speak to anyone without an attorney present from that very experience. I'm traumatized. You can't get too close to me and try to ask me too many questions without me saying, I plead the 5th or I need an attorney from that very experience.

Now when it comes to whether or not I was an inmate in the Cook County Jail at the time of the escape, yes that's true I was. Had I spent a great deal of time in the Cook County Jail awaiting trial; yes, I had, 4 and a half years to be exact."

¶ 33 Defendant then went on to detail the "appalling" and "terrible" conditions in jail, explaining that he did not "trust anybody in the system." He chose to remain in prison to wait for his trial, believing "they would see [his] innocence." In 2005, a correctional officer kicked and punched him. When defendant retaliated, other officers responded, jumping on defendant and badly injuring his eye and causing bruises to his face and cuts where his handcuffs were. Defendant remained in the hospital for three days. Although he knew he was likely to be beaten again, he nonetheless returned to jail. Upon his return, he did not immediately attempt to escape. However, after "going to trial and being found guilty," defendant realized he was "going to be one of these guys who sits in prison for 30 years, you know, on something that he didn't do."

¶ 34 On March 22, defendant went to the hospital to have a mole checked on his leg. He carried a knife in his shoe and pretended he had to use the restroom as "a ploy." When defendant went into the restroom, Officer Zaccaro closed the door and sat down to read a newspaper. Defendant then tried to remove his shackles with the knife but failed. At that point, defendant decided he would have to take Zaccaro's keys to undo his shackles.

¶ 35 Defendant exited the restroom and when Zaccaro started to put defendant's handcuffs back on, defendant "grabbed him" and told Zaccaro to give him his keys. Zaccaro refused, so defendant tried to take them from their location on Zaccaro's belt. Defendant explained that he only wanted Zaccaro's keys and not his gun. Defendant wanted to escape because he felt his life was in danger and if he escaped, he could alert the authorities and help others who were "falling victim to mistreatment in the Cook County Jail for years."

¶ 36 As defendant ran through the hallways, Francia approached him. Defendant held out his knife because he wanted Francia "to stay at bay." Francia then walked toward defendant and "side swipe[d]" defendant's hand, causing his own injury. When defendant reached the outside of the hospital, he entered the bus through the open door and told the driver something to the effect of, "[P]lease driver I'm in trouble I'll explain everything to you later." Rimmer agreed and started to drive. When the bus pulled up behind the stopped car, defendant saw all of the officers approaching and "knew the gig [*sic*] was up." He asked Rimmer to open the door and turned to exit the bus. Rimmer then jumped up and grabbed him. During their fight, defendant "accidentally hit" Rimmer with the knife. After his encounter with Rimmer, defendant surrendered peacefully to the police. Defendant reiterated that he did not belong in prison and that he feared if he stayed any longer, he would "come up dead" like the people he knew who had been beaten by officers or other inmates. He wanted to escape so that he could contact the appropriate authorities and encourage them to investigate the corruption in the jail.

¶ 37 On cross-examination, defendant acknowledged that he tried to escape but did so because he was attacked and was warned he would be attacked again. The State asked defendant

whether the purported beating by the officers took place on December 14, 2005, while defendant was in jail "[o]n the charges, among other things of first degree murder." Defendant responded affirmatively. The State entered photographs of defendant's injuries into evidence, and they were shown to the jury.

¶ 38 Defendant acknowledged that a jury found him guilty of first-degree murder on March 19, 2007. The State asked whether the jury made an additional finding that, in committing the murder, defendant personally discharged a firearm that proximally caused the victim to die. Defendant responded, "Oh, yeah. And when they did that, when they did that, sir." The State asked, "Is that what they found?" and defendant responded, "Not that I know of" and that he "thought it was something different than that." The State continued by asking, "Oh, well as a result of those findings, [defendant], after being found guilty of first degree murder three days before your escape and with the additional finding that you shot your victim to death, you were looking at a potential sentence of 45 years to the rest of natural life in prison?" Defendant objected, and the trial court overruled his objection. Defendant then agreed that he was found guilty of a crime, which he "did not commit."

¶ 39 The State said, "Okay. You were found guilty of a crime of first degree murder and the jury found that you committed that murder by shooting and killing your victim?" Defendant responded, "Well, the jury found that–found at that time that I was found guilty, yes or no, [defendant], is that what–I'm not sure I know they found me guilty on a murder, sir. I don't remember all of that." The State then asked, "And after your findings, after the conviction, you understood that your potential sentence was 45 years to the rest of your life, somewhere in that range?" Defendant acknowledged that he knew the sentence he was facing; however, it "didn't mean anything" to him because he "thought [he] wasn't going to stay in there." Defendant maintained that his motive for escaping was his fear that he would be beaten again, not the prospect of spending 45 years in prison. Later, the State again asked defendant whether, on the date of his escape, he was in prison for being "charged with a felony murder among other things?" Defendant responded, "I was charged with murder." The State then asked, "In fact, as of March 22, 2007, you had been convicted and were awaiting sentencing on the murder charges?" to which defendant responded, "Yes, I was in there."

¶ 40 According to defendant, Rimmer attacked him on the bus because the bus was surrounded by police and Rimmer realized his act of driving defendant may have looked like he was aiding and abetting an escaped prisoner. He denied that when he stood next to Rimmer with the knife in his hand he was attempting to force Rimmer to drive the bus. He explained he was holding the knife "in the first place" because he wanted to use it to remove his shackles.

¶ 41 In rebuttal, the State offered into evidence a certified statement of conviction and disposition, stating "that the defendant was found guilty by a verdict of guilty on the charge of first degree murder on March 19, 2007." The trial court admitted the document into evidence, indicating it would give the jury "a limiting instruction at the end of the argument with respect to that."

¶ 42 The case proceeded to closing arguments. During his closing, defendant argued that he was reaching for the officer's keys, not his gun. He further argued that he chose to escape for many reasons, but the "main" reason was that he was "beaten, savagely beaten and hospitalized." He chose to remain in prison following the beating because he wanted to "do it

the right way" and wait for his trial. He asserted that, "[t]hose are the facts, not that I just woke up one day and said you know what, the hell with this place, I'm out of here."

¶ 43 In rebuttal, the State challenged defendant's argument that he wanted to escape so that he could expose the purported inhumane treatment of jail inmates. The State asserted as follows.

> "It's not a coincidence that the escape attempt of March 22nd, 2007, comes 3 days on the heels of the guilty verdicts on a charge of first degree murder. On the verdict, the additional verdict that the murder was committed by personally discharging a firearm that resulted in death of the victim.
>
> It's not a coincidence that based upon those findings, that he's realizing he's looking at somewhere between 45 years and the rest of his life in prison.
>
> You want to know where why he's looking to escape? Nothing to do with the guards in the jail, nothing to do with the way people are treated, got nothing to do with the food or the noises in the middle of the night. It's about not going to prison for at least 45 years. It's about establishing his freedom."

¶ 44 Following instructions, the jury retired to deliberate. In discussing which evidence to give to the jury, the State commented as follows. "I believe we were going to send back all our exhibits except for the Grand Jury transcript and the certified copy." The trial court responded, "Right. The Grand Jury transcript doesn't go back, everything else does."

¶ 45 During deliberations, the jury sent the trial court multiple notes, including one that asked "Is it attempted robbery on one specific item or anything at all? Example: Pen, badge, socks, shoes... Anything or one item?" Defendant suggested that the jury be informed the language in the indictment controlled. He pointed out that the indictment specified he committed attempted armed robbery by trying to reach for Zaccaro's gun. Thus, defendant said he thought "that's all they should be worried about." The court responded that the armed robbery instruction correctly stated the jury could find he reached for any property. The court explained to defendant that an indictment was not meant to be taken literally and was only meant to inform a defendant of the charges he faced. The court further explained that an indictment could always be conformed to the proof at trial if the proof turned out to be "slightly different" than what was alleged. Defendant responded that he "had a misconception about how this goes" but the judge had cleared up his misconception. The court responded to the jury, "Your instructions contain the definition of armed robbery. Reread the instruction. This instruction does not make reference to a specific piece of property and includes any property of the victim."

¶ 46 The jury found defendant guilty of aggravated vehicular hijacking, unlawful vehicular invasion, escape, and attempted armed robbery. It found him not guilty of disarming a peace officer, and it could not reach a verdict as to aggravated kidnapping. The court declared a mistrial on the aggravated kidnapping count.

¶ 47 D. Posttrial Proceedings and Sentencing

¶ 48 Defendant accepted the appointment of the public defender for posttrial matters. Counsel filed a motion for new trial on defendant's behalf. At a hearing on the motion, counsel argued, among other things, that defendant was severely prejudiced at the beginning of *voir dire* by being shackled. In denying defendant's motion, the trial court noted that defendant drew attention to his shackles, the table was protected with drapery, and the juror who saw

the shackles already believed defendant was a security risk based on the guards around him. At a later hearing, the trial court imposed concurrent extended-term prison sentences of 14 years for aggravated escape, 30 years for attempted armed robbery, 30 years for vehicular invasion, and 50 years for aggravated vehicular hijacking. The court ordered the sentences to run consecutive to the natural life sentence defendant was serving for murder. This appeal followed.

¶ 49 II. ANALYSIS

¶ 50 On appeal, defendant argues (1) the State failed to prove him guilty of aggravated vehicular hijacking, because it failed to show he dispossessed the victim of the bus, (2) the State failed to prove him guilty of vehicular invasion, because it failed to show he used force to enter the bus, (3) a fatal variance existed between his attempted armed robbery indictment and conviction, (4) he was deprived of due process when he was shackled during jury selection without the trial court articulating the reasons for his shackling, (5) the State introduced excessive and irrelevant details regarding his prior murder conviction, (6) the trial court failed to comply with Illinois Supreme Court Rule 401(a) (eff. July 1, 1984), thereby rendering his waiver of counsel invalid, (7) the court erroneously imposed extended-term sentences on offenses that were not among the most serious class of felony, and (8) his convictions for both aggravated vehicular hijacking and vehicular invasion violate the one-act, one-crime doctrine. We address defendant's arguments in turn.

¶ 51 A. Defendant's Aggravated Vehicular Hijacking Conviction

¶ 52 Defendant first asserts that his aggravated vehicular hijacking conviction must be reversed. Relying on *People v. McCarter*, 2011 IL App (1st) 092864, he argues that to prove he committed vehicular hijacking, the State was required to show he actually dispossessed Rimmer of the shuttle bus rather than merely forcing Rimmer to drive it. Although the State acknowledges the holding in *McCarter*, it contends that it was wrongly decided because it relied on *People v. Strickland*, 154 Ill. 2d 489, 525 (1992), an armed robbery case that predated the creation of the vehicular hijacking statute. See Pub. Act 88-351, § 5 (eff. Aug. 13, 1993) (adding 720 ILCS 5/18-3, 18-4) (creating the offenses of vehicular hijacking and aggravated vehicular hijacking). It contends that the offense of vehicular hijacking should be "analyzed on its own terms," and that it should include "commandeering" a vehicle by forcing the victim to drive it.

¶ 53 In arguing that the undisputed facts of his case did not amount to vehicular hijacking, defendant has presented a matter of statutory construction; accordingly, our review is *de novo*. *People v. Brown*, 2013 IL 114196, ¶ 35. The primary aim of statutory construction is to ascertain and give effect to the intent of the legislature. *People v. Whitney*, 188 Ill. 2d 91, 97 (1999). The plain language of a statute is the best means of determining legislative intent, and, where the statutory language is clear and not ambiguous, it should be given its plain and ordinary meaning. *Id.* However, if the statutory language is ambiguous, a court may consider other extrinsic aids for construction, including legislative history, to resolve the ambiguity and determine legislative intent. *Id.* at 97-98. Where the statute we are analyzing is penal in nature, the rule of lenity requires that any ambiguity be strictly construed and resolved in favor of the defendant (*id.* at 98), with nothing taken by intendment or implication beyond

the obvious or literal meaning of the statute (*People v. Laubscher*, 183 Ill. 2d 330, 337 (1998)).

¶ 54 To sustain defendant's aggravated vehicular hijacking conviction, the State was required to show that he committed vehicular hijacking while armed with a dangerous weapon other than a firearm. 720 ILCS 5/18-4(a)(3) (West 2006). A person commits vehicular hijacking when he takes a motor vehicle from the person or immediate presence of another by the use of force or by threatening the imminent use of force. 720 ILCS 5/18-3(a) (West 2006).

¶ 55 In *McCarter*, the defendant was charged and convicted of murder, aggravated kidnapping, armed robbery, concealment of a homicidal death and aggravated vehicular hijacking, based on evidence which established that he and his brother had entered the victim's car, forced him to drive it to another location, shot him, and lit his car on fire. *McCarter*, 2011 IL App (1st) 092864, ¶ 3. The defendant challenged all five of his convictions, and this court affirmed the convictions for murder, aggravated kidnapping, and concealment of a homicidal death.[3] In analyzing his aggravated vehicular hijacking conviction, however, this court considered whether there was sufficient evidence to support a finding that defendant "took" the motor vehicle from the victim, when there was no evidence showing that the victim had been actually dispossessed of his vehicle. *Id.* ¶¶ 71-74. In rejecting the State's argument that the taking element could be satisfied by the defendant " 'taking control over the victim's car in his presence,' " this court noted that there had been no published decision issued as to whether a defendant could "take" a vehicle, within the meaning of the vehicular hijacking statute, by merely forcing the victim to drive his car to another location. *Id.* ¶ 74. Accordingly, we looked to the supreme court's decision in *Strickland*, 154 Ill. 2d at 525, in which it considered whether the "taking" element of the robbery statute (720 ILCS 5/18-1(a) (West 1992)) had been satisfied in similar factual circumstances. *McCarter*, 2011 IL App (1st) 092864, ¶¶ 75-76.

¶ 56 In *Strickland*, the defendant was charged and convicted of a number of offenses relating to the murder of a police officer. The evidence there showed that after shooting the officer, the defendant and his brother abandoned their car, got into the backseat of the victim's car in Buffalo Grove, and ordered him at gunpoint to drive them to California. The group drove to downtown Chicago, where the victim saw a marked police car and stopped to alert the officer. At that point, the defendant and his brother fled from the car, and were apprehended thereafter. *Strickland*, 154 Ill. 2d at 499-500. Defendant was convicted of armed robbery based on the "taking" of the victim's vehicle, and, on appeal, the defendant argued that there was no evidence to support that element where the victim remained in operation of the car throughout the time he and his brother were present. *Id.* at 525. In response, the State argued that the defendant and his brother effectively controlled the use of the victim's vehicle such that they were in constructive possession of the vehicle. *Id.*

¶ 57 The supreme court agreed with the defendant that the evidence was insufficient to sustain his armed robbery conviction, noting that the offense of robbery is " 'complete when force or threat of force causes the victim to part with possession or custody of property against his

[3]We reversed defendant's conviction for armed robbery where the only evidence showing that he and his brother had taken money from the victim was inadmissible hearsay, and where the victim was discovered with a "wad of burnt up money," which tended to show that money had not been taken from him.

will.' " *Id.* at 526 (quoting *People v. Smith*, 78 Ill. 2d 298, 303 (1980)). Although the supreme court observed that defendant's and his brother's actions "certainly denied [the victim] a large measure of control over his vehicle," it reversed the defendant's armed robbery conviction, finding no evidence to show that the victim's car was removed from his actual possession. *Id.*

¶ 58 In so holding, the supreme court "implicitly rejected" the State's argument that " 'taking control over the victim's car in his presence' " was sufficient to effectuate a "taking," as the supreme court gave no weight to the defendant's actions that denied the victim a large amount of control over his car. *McCarter*, 2011 IL App (1st) 092864, ¶ 78 (citing *Strickland*, 154 Ill. 2d at 526). After reviewing the *Strickland* decision, this court similarly found no evidence in *McCarter* to show that the victim had been dispossessed of his car, and concluded that the State had failed to establish the taking element. *Id.* ¶ 79. Based on this precedent, we conclude that the taking element of the aggravated vehicular hijacking statute requires that the defendant " 'cause[ ] the victim to part with possession or custody of [the vehicle] against his will.' " *Strickland*, 154 Ill. 2d at 526 (quoting *People v. Smith*, 78 Ill. 2d 298, 303 (1980)).

¶ 59 After reviewing the evidence presented at defendant's trial, as summarized below, we conclude that the State failed to prove the taking element beyond a reasonable doubt. The facts established that defendant boarded the bus, threatened Rimmer with a shank, and told him to drive. Rimmer began to move the bus, and moments later, reached over and opened the bus door, which caused the brakes to lock up and throw defendant forward. Rimmer grabbed defendant's arm and began wrestling with defendant, and shortly thereafter, defendant fled the bus and was apprehended almost immediately. While defendant's actions may have denied Rimmer a "measure of control" (*id.*) over his vehicle, there was no evidence that defendant actually took possession of the bus, or removed it from Rimmer's custody or possession. In the absence of such evidence, we must conclude, like in *Strickland* and *McCarter*, that defendant's conviction must be reversed.

¶ 60 Given the clear instruction of *McCarter* and *Strickland* as discussed above, we do not find the language of the vehicular hijacking statute to be ambiguous. However, even if we were to so find, our conclusion would remain the same because it is supported by the legislative history of the Illinois vehicular hijacking statute. As we recognized in *McCarter*, the language of the vehicular hijacking statute was written to closely track the language of the robbery statute. Compare 720 ILCS 5/18-3(a) (West 2006) ("[a] person commits vehicular hijacking when he or she takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force") and 720 ILCS 5/18-1(a) (West 2006) ("A person commits robbery when he or she takes property, except a motor vehicle *** from the person or presence of another by the use of force or threatening the imminent use of force.").

¶ 61 Other than the nature of the property which is taken, one of the key differences between the vehicular hijacking statute and the robbery statute is the applicable felony classes and available punishments. While robbery is a Class 2 probationable felony, the legislature created the offense of vehicular hijacking as a Class 1 nonprobationable felony. 720 ILCS 5/18-1(b), 18-3(c) (West 2006); 730 ILCS 5/5-5-3(c)(2)(K) (West 2006). If a person commits robbery or vehicular hijacking while armed with a dangerous weapon other than a firearm, both offenses are increased to Class X felonies, but aggravated vehicular hijacking is

additionally subject to an increased minimum sentence of seven years' imprisonment. 720 ILCS 5/18-2(b), 18-4(b) (West 2006) ("Aggravated vehicular hijacking in violation of subsection (a)(3) [while armed with a dangerous weapon other than a firearm] is a Class X felony for which a term of imprisonment of not less than 7 years shall be imposed.").

¶ 62 Based on this comparison, we conclude that the intent of the legislature in enacting the vehicular hijacking statute was to recognize the seriousness of taking a motor vehicle, versus taking another type of property, and increase the penalty for that offense accordingly. See Ill. Const. 1970, art. I, § 11 ("[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" (emphasis added)).

¶ 63 In explaining Senate Bill 902, which created the offenses of vehicular hijacking and aggravated vehicular hijacking, its sponsor, Senator Hawkinson, made the following comments:

> "Unfortunately, in our society from time to time a new–new genre of crime comes along. We're all too familiar with the tragedies around the country of–of car hijacking where someone armed or unarmed attacks a car, and either snatches the driver out; sometimes the driver, as we read yesterday about one story, is dragged, because they're caught in the rush, and–and caught by a seat belt or something and dragged and seriously injured or killed; sometimes these carjackings occur where a young child is a passenger in the car and is taken for a ride after a mother or father is–is yanked from the car. *** What it does, if the aggravating factors of being armed with a weapon or you have a youngster or a senior citizen passenger, it is a Class X felony with a minimum seven years, and if there is not an aggravating factor present, it is still a mandatory minimum sentence that is imposed, so there will be imprisonment in the penitentiary." 88th Ill. Gen. Assem., Senate Proceedings, April 15, 1993, at 281 (statements of Senator Hawkinson).

¶ 64 Senator LaPaille, a chief cosponsor of the bill, added that it was "about time" that the legislature "put the thugs and the criminals who carjack cars, take children away with them from their parents when they're in shopping centers, and create havoc on the roads and–and–and commit crimes and rape, et cetera, behind bars where they belong." *Id.* at 283 (statements of Senator LaPaille). In the House, Representative Homer, the House sponsor of the bill, explained that the bill was meant "to address that situation that an assailant takes a car away from an individual, from their presence, and it's a growing problem in this state as it is in the nation. We need to make it a tough crime and send a strong signal to the perpetrators of this offense." 88th Ill. Gen. Assem., House Proceedings, May 19, 1993, at 39 (statements of Representative Homer).

¶ 65 Around the same time that the legislature was considering Senate Bill 902, it was also debating a similar piece of legislation, House Bill 35. In discussing House Bill 35, Representative Novak set out the offense and available penalties, and stated:

> "This Bill...is very similar to the one that passed out of the Senate that is now in the House. And it is also is stronger than the one that we have on the federal level because the federal carjacking Bill only applies if the defendant was armed with a firearm. We are all aware of the...this particular category of crime that is occurring around the country. *** I think it's about time that we put a carjacking Bill on the books in Illinois to send a very strong message to the gang-bangers and to those who

use this device to perpetrate crimes on innocent people that it...will not be tolerated, and their particular *** behavior will be punished in a very definitive manner." 88th Ill. Gen. Assem., House Proceedings, April 20, 1993, at 164 (statements of Representative Novak).

¶ 66 As these comments make abundantly clear, the legislature's intent in creating the offense of vehicular hijacking, was to "make it a tough crime" (88th Ill. Gen. Assem., House Proceedings, May 19, 1993, at 39 (statements of Representative Homer)), and to "send a very strong message *** [that it would] be punished in a very definitive manner" (88th Ill. Gen. Assem., House Proceedings, April 20, 1993, at 164 (statements of Representative Novak)). Accordingly, the vehicular hijacking statute increased the penalties available to those who commit vehicular hijacking and aggravated vehicular hijacking, beyond that which was authorized for the analog crimes of robbery and armed robbery.

¶ 67 Concomitantly, we observe that both the vehicular hijacking and robbery statutes require that the defendant *take*, respectively, a motor vehicle, or property other than a motor vehicle, from the victim. Although the taking element of the robbery statute had been previously interpreted by our supreme court in *Strickland* to require the defendant to actually dispossess, or take custody from, the victim, not merely exercise of control over the property, the legislature chose to track that same language in creating the vehicular hijacking statute in 1993, defining the offense as occurring when a defendant "*takes* a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force." (Emphasis added.) 720 ILCS 5/18-3(a) (West 2006). The rules of statutory construction recognize that we are to presume the legislature was aware of how this language has been construed in the courts, and where the legislature did not modify that language, we presume that it intended to maintain the previously-settled meaning of the term "takes." See, *e.g.*, *People v. Young*, 2011 IL 111886, ¶ 17 (where a term has a settled legal meaning, we will normally infer the legislature intended to incorporate the established meaning); *People v. Hickman*, 163 Ill. 2d 250, 262 (1994) (where statutes are enacted after judicial opinions, we presume the legislature acted with knowledge of the prevailing case law). As a result, we do not believe that the legislature's intent in creating the vehicular hijacking statute was to change the meaning of a word which had been previously defined by our supreme court. We therefore adhere to our prior holding in *McCarter*, and conclude that the taking element of the aggravated vehicle hijacking statute requires more than the facts demonstrated here.

¶ 68 The State, however, argues that interpreting *McCarter* to require evidence of actual dispossession would lead to "absurd" results and would "negate any 'carjacking' that involve[s] the victim still inside or on the car itself." Instead, it asks this court to interpret the Illinois statute in line with decisions interpreting the federal carjacking statute which, it claims, "rightly recognize that the offense can be committed without having to 'take away' or 'dispossess' the victim of the vehicle." The State also cites a number of out-of-state cases, which it asks this court to look to as "persuasive authority for a logical construction of Illinois' own carjacking statute to include the scenario where an offender commandeers a vehicle by forcing the victim to drive the vehicle, while the victim is under the defendant's control by force or threat of force." The dissent agrees, and similarly relies on a number of federal and out-of-state cases for the proposition that "a defendant need not remove the victim from the car" to be guilty of carjacking.

¶ 69 Initially, we must clarify that we did not conclude in *McCarter*, nor do we conclude in this case, that our vehicular hijacking statute requires a defendant to *actually remove* the victim from his vehicle. While removing a victim from his vehicle would be one way to dispossess him of that vehicle, as defendant acknowledges, there are undoubtedly circumstances in which a defendant can "take" a vehicle from a victim while the victim still remains inside. However, the determination of whether a victim has been dispossessed of his vehicle is a fact-specific inquiry, which turns on the particular circumstances of each case. As we noted in *McCarter*, our decision was limited to the facts of that case, and under those circumstances we were "compelled to conclude that the State failed to establish the taking element." Similarly here, after a review of the record, we conclude that the evidence was insufficient to show that defendant dispossessed Rimmer of his vehicle.

¶ 70 We also note that this court is not bound by federal or out-of-state decisions, particularly where, as here, we are interpreting an Illinois statute. *Sundance Homes, Inc. v. County of Du Page*, 195 Ill. 2d 257, 276 (2001); *People v. Fern*, 240 Ill. App. 3d 1031, 1039-40 (1993) ("In construing our own State laws, we are not bound by Federal court decisions other than, in appropriate cases, those of the United States Supreme Court ***."). The dissent cites *Andrews v. Gonzalez*, 2014 IL App (1st) 140342, ¶ 23, for the proposition that "comparable court decisions of other jurisdictions are persuasive authority and entitled to respect," (internal quotation marks omitted). In *Andrews*, however, this court was considering a matter of first impression in Illinois, and "[g]iven the lack of Illinois case law on point, we [chose] to examine" the foreign cases. *Id.* In this case, the State's and dissent's reliance on federal and out-of-state cases is particularly problematic, because courts in our own jurisdiction have already spoken on this issue. Where we have clear precedent from Illinois courts interpreting an Illinois statute, we do not believe it is necessary or appropriate to look to foreign authority to second guess our own interpretation.

¶ 71 We acknowledge that some foreign jurisdictions have found the taking element of their own statutes to be satisfied in situations where a defendant has forced a victim to drive his own vehicle to a different location (see *United States v. DeLaCorte*, 113 F.3d 154 (9th Cir. 1997); *Williams v. State*, 990 So. 2d 1122 (Fla. Dist. Ct. App. 2008); *People v. Duran*, 106 Cal. Rptr. 2d 812, 814, 816 (Cal. Ct. App. 2001)), however, we find that this interpretation is clearly contrary to the approach instructed by our supreme court. The foreign cases relied on by the dissent have generally utilized a "control" based analysis to the taking element of their respective statutes–an approach which our supreme court has explicitly rejected. Compare *DeLaCorte*, 113 F.3d at 156 (noting that the federal carjacking statute, and other robbery offenses, require " 'simply the acquisition by the robber of possession, dominion *or control* of the property for some period of time' " (emphasis added) (quoting *United States v. Moore*, 73 F.3d 666, 669 (6th Cir. 1996), *cert. denied*, 517 U.S. 1228 (1996))), and *Williams*, 990 So. 2d at 1123 ("It is enough that the defendant obtains control over the driver of the vehicle through force or violence, threats of force or violence, or by putting the driver in fear.") with *Strickland*, 154 Ill. 2d at 526 ("Although the [defendants'] actions certainly denied [the victim] a large measure of control over his vehicle *** the automobile was never removed from [the victim's] actual possession."). As this comparison makes clear, our supreme court has indicated that merely denying the victim "a large measure of control over his vehicle" is not enough to find that defendant "took" that vehicle, while such a showing would be enough to establish the taking element of various federal and out-of-state carjacking statutes. Instead,

in Illinois the taking element of the vehicular hijacking statute is only established when defendant "causes the victim to part with possession or custody of [the vehicle] against his will." (Internal quotation marks omitted.) *Id.*

¶ 72 Although the dissent contends that the carjacking statutes from foreign jurisdictions have "almost identical" language to our own, our review of those statutes shows that they are not particularly similar to the Illinois statute. As noted above, the Illinois vehicular hijacking statute applies when a defendant knowingly "takes a motor vehicle from the person or the immediate presence of another by the use of force or by threatening the imminent use of force." 720 ILCS 5/18-3(a) (West 2006). By contrast, a person violates the federal carjacking statute when he or she "with the intent to cause death or serious bodily harm takes a motor vehicle that has been transported, shipped, or received in interstate or foreign commerce from the person or presence of another by force and violence or by intimidation, *or attempts to do so*." (Emphasis added.) 18 U.S.C. § 2119 (2006). This statute is different, and in some ways much broader, than the Illinois vehicular hijacking offense: most glaringly, it applies in situations in which a defendant merely attempts to take a motor vehicle. Also, the taking requirement of the federal statute has also been interpreted to require " 'simply the acquisition *** of possession, dominion or control of the [vehicle] for *some period of time*.' " (Emphasis added.) *DeLaCorte*, 113 F.3d at 156 (quoting *United States v. Moore*, 73 F.3d 666, 669 (6th Cir. 1996), *cert. denied*, 517 U.S. 1228 (1996)). Our statute has never been interpreted to apply in such broad temporal contexts.

¶ 73 The out-of-state statutes relied on by the dissent are equally broad, dissimilar, and ultimately unhelpful to an analysis of our vehicular hijacking statute. In *Williams v. State*, 990 So. 2d 1122 (Fla. Dist. Ct. App. 2008), the Florida Appellate Court considered the Florida carjacking statute, which provides that " '[c]arjacking' means the taking of a motor vehicle *which may be the subject of larceny* from the person or custody of another, with intent to either permanently or *temporarily deprive* the owner of the motor vehicle, when in the course of the taking there is the use of force, violence, assault, or putting in fear." (Emphases added and omitted.) *Id.* (quoting Fla. Stat. § 812.133(1) (2006)). This statute interjects the concept of "larceny" and prohibits mere temporary deprivations–notions which are notably absent in our own statute. See also *People v. Duran*, 106 Cal. Rptr. 2d 812, 815 (Cal. Ct. App. 2001) (considering the California carjacking statute, which states that " ' "[C]arjacking" is the felonious taking of a motor vehicle in the possession of another, from his or her person or in the immediate presence *** against his or her will and with the intent to either permanently or *temporarily deprive* the person in possession of the motor vehicle of his or her possession, accomplished by force or fear' " (emphasis added and omitted) (quoting Cal. Penal Code § 215 (West 2000))).

¶ 74 In *Bruce v. State*, 555 S.E.2d 819 (Ga. Ct. App. 2001), the Georgia Appellate Court reflected on the Georgia offense of hijacking a motor vehicle, which is complete when a "person while in possession of a firearm or weapon *obtains* a motor vehicle from the person or presence of another by force and violence or intimidation *or attempts or conspires to do so*." (Emphases added.) Ga. Code Ann. § 16-5-44.1(b) (2000).The Georgia statute includes both attempts and conspiracy, and couches its language in terms of "obtaining" a motor vehicle, which the court explained, "encompasses the notion of acquiring control thereof, regardless of whether the victim remains with the vehicle." *Bruce*, 555 S.E.2d at 823. By contrast, our statute contains no references to conspiracy, attempt, or obtaining, and, as

stated, our supreme court has specifically rejected a control-based application of our statute. See also *People v. Green*, 580 N.W.2d 444, 449-50 (Mich. Ct. App. 1998) (Under the pre-2004 version of the Michigan carjacking statute, "A person who by force or violence, or by threat of force or violence, or by putting in fear *robs, steals, or takes* a motor vehicle *** from another person, in the presence of that person or the presence of a passenger or in the presence of any other person in lawful possession of the motor vehicle, is guilty of carjacking ***." (Emphasis added.) (citing Mich. Comp. Laws Ann. § 750.529a(1) (West 1994))); *Winstead v. United States*, 809 A.2d 607, 610 n.3 (D.C. 2002) (In D.C., " 'A person commits the offense of carjacking if, by any means, that person knowingly or recklessly by force or violence, whether against resistance or *by sudden or stealthy seizure or snatching*, or by putting in fear, *or attempts to do so*, shall take from another person immediate actual possession of a person's motor vehicle.' " (Emphases added.) (quoting D.C. Code § 22-2803 (2001))). As the foregoing analysis shows, the carjacking statutes used in the federal system and in other states, are far from "almost identical" to our own statute, and for this reason, we do not find their analyses compelling to an interpretation of the Illinois statute.

¶ 75 In addition, none of the federal cases the State cites involve an analysis of the taking element of the statute, or whether it can be established without proof that the defendant dispossessed the victim of his vehicle. See *United States v. Figueroa-Cartagena*, 612 F.3d 69, 75 (1st Cir. 2010) (analyzing whether there was sufficient evidence to sustain the defendant's various carjacking convictions where her involvement in the offense began after the other perpetrators had seized the vehicle); *United States v. Lebrón-Cepeda*, 324 F.3d 52 (1st Cir. 2003) (considering whether the *mens rea* element of the carjacking statute had been proven over the defendants' claim that their intent to seriously harm or kill the victim was formed *after* taking control of his vehicle); *Chatman v. Arnold*, No. 2:2014CV05896 (C.D. Cal. Apr. 29, 2015) (unpublished federal magistrate order dismissing the defendant's *habeas corpus* petition, which alleged he was denied effective assistance of counsel where counsel failed to obtain phone records which he claimed would have shown that he did not carjack the victim, but instead, that he was trying to purchase drugs from the victim and that the "drug deal [had] gone wrong"); *People v. Johnson*, 343 P.3d 808, 824 (Cal. 2015) (analyzing whether there was sufficient evidence to prove that defendant intended to take the victim's car at the time he killed her, and whether he took the victim's vehicle from her "person or immediate presence"). Because these cases did not consider the taking element of a state or federal carjacking statute–let alone the taking element of our own state statute–we find the State's reliance on them unconvincing.

¶ 76 Furthermore, the factual scenarios underlying these cases are decidedly different than the facts of this case, and show that those defendants did far more than "force[ ] the victim[s] to drive on [their] command." In *Figueroa-Cartagena*, the evidence showed that one of the perpetrators bragged about taking the victim's vehicle "policeman style," which was understood to mean "that they stopped the car . . . with the weapon, and they said, this is the police." The perpetrators then drove the vehicle to defendant's brother's house with the victim in the backseat, and the victim's dead body was later discovered in the backseat of the vehicle. *United States v. Figueroa-Cartagena*, 612 F.3d 69, 72 (1st Cir. 2010) (referring to the codefendant's companion opinion, *United States v. Castro-Davis*, 612 F.3d 53 (1st Cir. 2009), for the evidence adduced at trial). In *United States v. Lebrón-Cepeda*, 324 F.3d 52, 55 (1st Cir. 2003), the three offenders "pulled open the car doors and ordered [the victims] ***

to move into the car's backseat." The victims complied, and the defendant "took the wheel" and "drove away."

¶ 77 In *Chatman v. Arnold*, No. 2:2014CV05896 (C.D. Cal. Apr. 29, 2015), the petitioner entered the passenger side of the victim's truck, and "tried to position himself between [the victim] and the steering wheel." The petitioner "fought [with the victim] to control the steering wheel," "stepped on the gas" and "eventually was able to commandeer the truck down the street a short way ***, veering onto the sidewalk, hitting three parked cars and eventually crashing to a stop."

¶ 78 Finally, in *Johnson*, 343 P.3d 808, the defendant found and murdered the victim in her kitchen, stole her car keys, and used those keys to steal her car from the garage. In determining whether there was evidence to show that the vehicle had been taken from her "immediate presence," the California Supreme Court looked to the state's robbery statute, observing that the legislature enacted the carjacking statute after it had "definitively interpreted the phrase 'immediate presence' " in the robbery statute. *Id.* at 827. Accordingly, the court "presume[d] that when the Legislature employs words that have been judicially construed (and especially so recently), it intends the words to have the meaning the courts have given them." *Id.* Rather than provide support for the State's suggested interpretation of the Illinois vehicular hijacking statute, we find that the cases cited by the State draw attention to the deficiency of evidence of a taking in this case, and confirm our conclusion that defendant's conviction must be reversed.

¶ 79 The dissent also relies on a dictionary definition of the word "hijacking" from the statutory title to conclude that a defendant need not dispossess the victim of his vehicle. We do not believe that the consideration of the statutory title is appropriate in this case. Our supreme court has repeatedly indicated that "[w]hen the legislature enacts an official title or heading to accompany a statutory provision, that title or heading is considered only as a 'short-hand reference to the general subject matter involved' in that statutory section, and 'cannot limit the plain meaning of the text.' " *Michigan Avenue National Bank v. County of Cook*, 191 Ill. 2d 493, 505-06 (2000) (quoting *Brotherhood of R.R. Trainmen v. Baltimore & Ohio R.R. Co.*, 331 U.S. 519, 528-29 (1947)). Official headings or titles are of use " 'only when they shed light on some ambiguous word or phrase' " within the text; they " 'cannot undo or limit that which the text makes plain.' " *Id.* at 506 (quoting *Brotherhood of R.R. Trainmen*, 331 U.S. at 529). Because we do not find the statute's meaning to be ambiguous, we need not, and indeed should not, look to the statutory heading for an alternative interpretation.

¶ 80 Before ending our discussion, we reiterate that the determination of whether a taking has occurred must be a fact-based inquiry, and our decision here is limited to the facts of this case. Although the dissent contends that our decision leads to an "absurd legislative result" (*infra* ¶ 155) by posing a specific scenario, we will not speculate on whether another set of facts would constitute a dispossession, because our decision is limited to the facts presented here.

¶ 81 Finally, we address the State's contention that even if the evidence is insufficient to support defendant's aggravated vehicular hijacking conviction, "outright reversal is not warranted" and we should "enter judgment on an attempt." It maintains that "[b]y defendant's own reasoning, the offense is not completed until defendant is successful in 'taking' the bus away from the victim. Since that did not happen because the driver quickly

responded to defendant's threat and police were able to capture defendant before he was able to complete the crime, the offense was attempt[ed] vehicular hijacking."

¶ 82 However, the State points to no evidence, and we find none, which would suggest that defendant intended to remove the bus from Rimmer's possession as would be required to support an attempt conviction. See 720 ILCS 5/8-4(a) (West 2006) (an attempt crime is proven if a defendant does any act that constitutes a substantial step toward commission of a specific offense, *with the intent to commit that offense*). We therefore decline the State's invitation to enter judgment for an attempt crime, and reverse defendant's conviction for aggravated vehicular hijacking.

¶ 83 B. Defendant's Vehicular Invasion Conviction

¶ 84 Defendant next argues that his vehicular invasion conviction must be reversed, because there was insufficient evidence to prove that he used force to enter the shuttle bus. The State responds that defendant was properly convicted of that offense, where he used and threatened force immediately after entering the bus, and where his actions were "connected, related, and together comprised the offense of vehicular invasion."

¶ 85 To sustain defendant's vehicular invasion conviction in this case, the State was required to prove that defendant knowingly, by force and without lawful justification, entered the interior of the occupied bus, with the intent to commit the felony of escape therein. 720 ILCS 5/12-11.1 (West 2006). Defendant challenges only the evidence to prove that he entered the bus "by force," maintaining that his entry was not forceful, as he entered through the open door. Because defendant argues that the undisputed facts of his case did not amount to vehicular invasion, defendant has, again, presented a matter of statutory construction, for which our review is *de novo*. *Brown*, 2013 IL 114196, ¶ 35.

¶ 86 In arguing that his entry was not forceful, defendant acknowledges that the Second District Appellate Court "rejected a similar argument" in *People v. Isunza*, 396 Ill. App. 3d 127 (2009), but he maintains that the facts of that case are distinguishable from the case at bar. In *Isunza*, the defendant similarly argued that he did not use force to enter the victim's vehicle when he reached in through the open window and punched her. *Id.* at 131. The court, however, determined that the open window was not dispositive of whether defendant used force to reach into the vehicle, and that defendant's act of punching the victim while he stood outside her vehicle as she was sitting inside her car satisfied the element of using force to reach into the car. *Id.* We reach the same conclusion here where the evidence showed that defendant rushed onto the bus, threatened to stab Rimmer in the neck with a knife, and then engaged in a struggle with Rimmer during which he repeatedly stabbed him in the face and chest.

¶ 87 Defendant, however, distinguishes his entry from that in *Isunza*, and contends that his "entry into the bus and subsequent acts inside were distinct physical acts" whereas in *Isunza*, the "acts of force and entry *** were one and the same." Relatedly, he maintains that he did not use actual force but merely "*threatened* the use of force" (emphasis in original) upon entering the bus. See 720 ILCS 5/12-11.1(a) (West 2006) (requiring entry "by force"). He acknowledges that he subsequently "used force" when Rimmer "engaged him in a struggle" but contends that this use of force was insufficient to sustain his conviction because it "only occurred after he completed his entry."

¶ 88 In considering defendant's claims, we are instructed by cases interpreting the force element in the robbery context, which have concluded that the force need not occur at the actual moment of taking, but it is sufficient if the force and the taking are part of a series of events constituting a single incident. *People v. Lewis*, 165 Ill. 2d 305, 339 (1995) ("As long as there is some concurrence between the defendant's threat of force and the taking of the victim's property, a conviction for armed robbery is proper."); *People v. Brooks*, 202 Ill. App. 3d 164, 170 (1990), *abrogated on other grounds by People v. Williams*, 149 Ill. 2d 467 (1992).

¶ 89 In *Brooks*, 202 Ill. App. 3d at 167-68, the defendant challenged his robbery conviction, claiming that the evidence was insufficient to prove that he took the victim's property by force or threat of force. At trial, the victim testified that she was seated on a CTA bus in Chicago, when she discovered that her wallet was missing from her purse. The victim turned around and saw defendant, who was seated behind her, with her wallet in his hands. The victim demanded the return of her wallet, but defendant pushed her left shoulder and ran away from the bus. On appeal, the defendant argued that his conviction should be reversed because no force was used in the actual taking of the wallet. The court disagreed, noting that the force or threatened force "need not transpire before or during the time the property is taken" but that it could be "used as part of a series of events constituting a single incident." *Id.* at 170. The court further stated that an offense can "constitute robbery where the perpetrator defends against a challenge immediately upon the taking or where the perpetrator's departure is accomplished by the use of force. [Citations.]" *Id.* The court then concluded that the defendant's push, "used in a series of events involving a single incident and in response to the victim's challenge immediately upon the taking and before defendant's departure, is sufficient to sustain the robbery conviction." *Id.*

¶ 90 Similarly here, the evidence established at trial shows that defendant struggled with Rimmer, and repeatedly stabbed him in the face and chest, when he attempted to resist defendant's demands. This use of force was part of a series of closely connected events, and occurred "in response to the victim's challenge" and "before defendant's departure." *Id.* In these circumstances, we conclude that defendant's actions were sufficient to sustain his vehicular invasion conviction.

¶ 91 In so holding, we also note that we need not reach defendant's alternative challenge to his vehicular invasion conviction–that it must be reversed because the imposition of convictions for both aggravated vehicular hijacking and vehicular invasion violate the one-act, one-crime rule. Because we previously found that his conviction for aggravated vehicular hijacking must be reversed, there can be no one-act, one-crime rule violation.

¶ 92 C. The Variance in Defendant's Attempted Armed Robbery Charge and Conviction

¶ 93 Defendant next contends that a fatal variance existed between his attempted armed robbery indictment and the proof and jury instructions as to that charge. The State responds that defendant caused any variance between the indictment and the proof and conviction and thus cannot claim that he was misled by it. Furthermore, the State argues, no fatal variance occurred, as the indictment contained all of the essential elements of attempted armed robbery and defendant is not subject to double jeopardy.

¶ 94 To be fatal, "a variance between the allegations in a criminal complaint and the proof at trial must be material and be of such character as may mislead the defendant in making his or her defense, or expose the defendant to double jeopardy." *People v. Maggette*, 195 Ill. 2d 336, 351 (2001). Where an indictment charges all of the essential elements of a crime, matters that are unnecessarily added may be regarded as surplusage. *People v. Collins*, 214 Ill. 2d 206, 219 (2005). A complaint must state the name of the accused; set forth the name, date and place of the offense; cite the statutory provision the defendant allegedly violated; and set forth in the statutory language the nature and elements of the charged offense. *Id.*

¶ 95 Defendant's attempted armed robbery indictment alleged that on or about March 22, 2007, he, with the intent to commit armed robbery, "did any act, to wit: reached for Vito Zaccaro's gun, which constituted a substantial step towards the commission of the offense of armed robbery." At trial, defendant testified that he was not reaching for Zaccaro's gun, but rather, his keys. During deliberations, the jury sent a note asking, "Is it attempted robbery on one specific item or anything at all? Example: Pen, badge, socks, shoes... Anything or one item?" The trial court responded to the jury, "Your instructions contain the definition of armed robbery. Reread the instruction. This instruction does not make reference to a specific piece of property and includes any property of the victim." The jury ultimately found defendant guilty of attempted armed robbery but not guilty of disarming a peace officer. Based on the jury's findings, defendant argues that it found him guilty of attempted armed robbery for attempting to take Zaccaro's keys. Accordingly, he argues a fatal variance existed between the crime he was charged with and the crime for which he was convicted.

¶ 96 Contrary to defendant's assertions, we find no fatal variance occurred. First, the allegation that defendant reached for Zaccaro's gun was not a material element of the attempted armed robbery charge. See *People v. Lewis*, 165 Ill. 2d 305, 340 (1995) (the essential elements of robbery are "taking property by force or threat of force. Nothing more is required to sustain the conviction."); see also *People v. Santiago*, 279 Ill. App. 3d 749, 754 (1996) (affirming the defendant's armed robbery conviction even though the information named the wrong victim). The indictment alleged that defendant, with the intent to commit armed robbery, by use of force and while armed with a dangerous weapon other than a firearm, did any act which constituted a substantial step towards the commission of the offense of armed robbery. Thus, the indictment set forth all of the essential elements of attempted armed robbery, and the naming of the item that defendant attempted to take from Zaccaro was surplusage.

¶ 97 Defendant's reliance on *People v. Daniels*, 75 Ill. App. 3d 35 (1979), does not convince us otherwise. In *Daniels*, the defendants were charged with armed robbery for taking United States currency from the victim. *Id.* at 40. At trial, however, the only evidence presented in connection with the robbery related to the taking of a watch. *Id.* Furthermore, the State failed to prove defendants took the watch. *Id.* at 41. Thus, the *Daniels* court reversed the defendants' armed robbery convictions. *Id.* Unlike in *Daniels*, the evidence in this case was sufficient to establish that defendant tried to take Zaccaro's keys. Defendant admitted as much at trial. Defendant notes the *Daniels* court prefaced its discussion regarding the insufficiency of the evidence with the phrase, "We note additionally ***." *Id.* Thus, defendant argues the insufficiency of the evidence in *Daniels* had little bearing on the court's decision to reverse. However, our reading of *Daniels* shows both the variance and the

insufficiency of the evidence factored into the court's determination that reversal was warranted.

¶ 98 In addition, the variance in defendant's case was not fatal because defendant is not exposed to the possibility of double jeopardy. "If any future prosecution were attempted, prior prosecution on the same facts could be proved by resort to the record." (Internal quotation marks omitted.) *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 71. Furthermore, we disagree with defendant that the variance in this case materially misled him. Notably, it was defendant and not the State who caused the variance in this case. While defendant argues that he was misled in the preparation of his defense, it is clear that any prejudice defendant suffered stemmed from his own misapprehension of the law regarding the nature of indictments. Indeed, defendant acknowledged after receiving the jury's note that he "had a misconception" about indictments. Yet, the determination of whether a defendant is "materially misled" in the context of fatal variance cases focuses on whether the State's introduction of evidence that was not alleged in the indictment hampered the defendant's ability to prepare a defense. See, *e.g.*, *People v. Winford*, 383 Ill. App. 3d 1, 5-6 (2008) (the record contained no indication that the indictment's reference to cocaine misled defendant in making his defense or that the State's evidence surprised him, as the record showed the defendant believed he was on trial for heroin and his sole defense was that the State failed to prove his intent to deliver beyond a reasonable doubt); *People v. Jones*, 245 Ill. App. 3d 674, 676-77 (1993) (the defendant was not misled in preparing her defense where the indictment alleged the defendant exchanged a comforter for currency and the State's evidence established she conveyed a comforter in exchange for a refund slip, as her defense had nothing to do with whether she received a refund slip or currency in exchange for the comforter); *People v. Montgomery*, 96 Ill. App. 3d 994, 996, 998 (1981) (the defendant could not have been misled in preparing his defense where he was charged with the aggravated assault of one officer and the officers' testimony at trial established the defendant pointed a gun at another officer, since "the only issue [defendant] contested was whether he had a gun in his hand"). Where defendant caused the variance in his case, he cannot claim he was misled in the preparation of his defense.

¶ 99 In so concluding, we find unpersuasive defendant's reliance on *People v. Durdin*, 312 Ill. App. 3d 4 (2000), which he cites as providing an example of a situation like his wherein a defendant conceded a criminal act other than the one specified in the charging instrument. In *Durdin*, the defendant was charged with both delivery of cocaine within 1,000 feet of a public school and delivery of heroin. *Id.* at 5. He conceded that he bought heroin for an undercover officer but claimed entrapment. *Id.* Thus, the *Durdin* defendant's confession that he bought heroin was not made in an attempt to defeat the language charging him with delivery of cocaine, but rather, to refute his delivery of heroin charge. Furthermore, unlike defendant, the defendant in *Durdin* was convicted of the wrong crime. *Id.* at 8. Here, defendant was convicted of the correct crime, and "[i]t would be an exercise in pointless formalism for us to reverse" defendant's conviction. *Santiago*, 279 Ill. App. 3d at 754.

¶ 100 D. Shackles During Jury Selection

¶ 101 Defendant next asserts that he was deprived of due process where the trial court allowed him to remain shackled during jury selection without articulating the reasons establishing a manifest need for his restraints. He contends the shackles inhibited his ability to represent

himself and prejudiced him in the eyes of the jurors, at least one of whom saw his restraints despite the curtain placed around his table.

¶ 102 The shackling of a defendant is generally disfavored because (1) it tends to prejudice the jury against the defendant, (2) it restricts the defendant's ability to assist his counsel during trial, and (3) it offends the dignity of the judicial process. *People v. Boose*, 66 Ill. 2d 261, 265 (1977). Nonetheless, a defendant may be shackled when the court has reason to believe the defendant may try to escape, he may pose a threat to the safety of people in the courtroom, or shackling is necessary to maintain order during trial. *Id.* at 266. Factors the court should consider in making its determination regarding shackling may include "[t]he seriousness of the present charge against the defendant; defendant's temperament and character; his age and physical attributes; his past record; past escapes or attempted escapes, and evidence of a present plan to escape; threats to harm others or cause a disturbance; self-destructive tendencies; the risk of mob violence or of attempted revenge by others; the possibility of rescue by other offenders still at large; the size and mood of the audience; the nature and physical security of the courtroom; and the adequacy and availability of alternative remedies." (Internal quotation marks omitted.) *Id.* at 266-67. The court should place its reasons for shackling on the record and provide defense counsel with an opportunity to present reasons why the defendant should not be shackled. *People v. Allen*, 222 Ill. 2d 340, 353 (2006). We review a trial court's decision that shackling is necessary for an abuse of discretion. *People v. Urdiales*, 225 Ill. 2d 354, 416 (2007).[4]

¶ 103 We agree with defendant that the trial court violated his right to due process by failing to undertake a *Boose* analysis and state the reasons for shackling on the record before requiring him to remain shackled. We are guided by the supreme court's decision in *Allen*. There, the court did not undertake a *Boose* analysis before requiring a defendant to wear a stun belt, instead deferring to the sheriff's judgment. *Allen*, 222 Ill. 2d at 348. The supreme court held that the court's actions violated the defendant's due process rights. *Id.* at 349. As in *Allen*, here, the trial court conducted no *Boose* analysis and instead deferred to the DOC officers. When defendant asked prior to jury selection whether his shackles could be removed, the court responded it would "leave it at [DOC's] discretion." After defendant reminded the court that he had behaved appropriately at a prior hearing without shackles, the court stated, "You are preaching to the choir. All you have to do is talk to the men in charge. If you can convince those three men that you don't need leg shackles, you don't have to have them on." Later, defendant asked the court whether his shackles could be removed when trial "officially" commenced, and the court stated, "That's up to the Illinois Department of Corrections." After defendant persisted in his argument, the court stated it would take the matter under consideration and make a decision the following day. At the end of jury selection, the court asked a DOC officer about defendant's shackles, and the officer responded, "We keep them on unless you order them off." The court then entered an order that defendant's shackles be removed for the remainder of trial. Thus, rather than conduct a

[4]Defendant contends our standard of review is *de novo*, arguing the trial court's failure to make a *Boose* analysis was undisputed and that the issue is therefore "the legal significance" of the court's failure to comply with *Boose*. However, defendant has cited no authority applying a *de novo* standard of review where a *Boose* analysis has not been conducted. To the contrary, Illinois courts have continued to cite the abuse of discretion standard even where no *Boose* analysis is made. See, *e.g.*, *Allen*, 222 Ill. 2d at 354.

Boose analysis, the court initially deferred to the judgment of DOC but then subsequent to jury selection, after consulting with DOC officers, ordered the shackles removed for the trial.

¶ 104 The State suggests that rather than initially defer to the DOC officers, the trial court in fact agreed with them that defendant was a flight risk. Actually, the record shows that although initially deferring to the DOC on this issue, the trial court to its credit maintained a continuous dialogue with the defendant on the issue. At the same time, the trial court limited any prejudice incurred by the defendant by utilizing curtains during jury selection and also questioning the prospective jurors who noticed the shackles as to any effect that may have had on them. Ultimately, through this ongoing discussion, the defendant was able to convince the trial court that his shackles should be removed during trial based on his promises to comport himself appropriately as well as the limitations the shackles would impose on him during the trial process. In this regard, the trial court stated, at the end of jury selection, that it would sign an order allowing defendant's shackles to be removed the following day, as "people usually like to stand when they give their argument and move around a little bit." It is for these reasons, as well as others discussed below, that we ultimately find the error here to be very limited and in fact harmless.

¶ 105 Furthermore, because it is distinguishable, we find unpersuasive the State's reliance on *People v. Buss*, 187 Ill. 2d 144, 217 (1999), *abrogated on other grounds by In re G.O.*, 191 Ill. 2d 37, 46-50 (2000). In that case, the trial court did not state its reasons for requiring shackles prior to trial but later explained at a posttrial hearing that the basis for its decision was courtroom security, the serious nature of the offense with which the defendant was charged, and the large courtroom audience. *Id.* Unlike in *Buss*, at defendant's posttrial motion in this case, the court did not articulate why the shackles were necessary. In sum, we conclude the court violated defendant's right to due process by failing to conduct a *Boose* hearing with regard to the shackles during jury selection.

¶ 106 As defendant objected to his shackles at trial and in his posttrial motion, the State bears the burden of establishing " 'beyond a reasonable doubt that the [shackling] error complained of did not contribute to the verdict obtained.' " *Deck v. Missouri*, 544 U.S. 622, 635 (2005) (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)); see also *People v. Robinson*, 375 Ill. App. 3d 320, 333 (2007) ("The improper shackling of a defendant may be harmless error."). Three approaches exist for determining whether an error in a criminal trial is harmless under *Chapman*: (1) focusing on the error to determine whether it might have contributed to the conviction, (2) examining the other evidence in the case to see if overwhelming evidence supports the defendant's conviction, and (3) determining whether the evidence is cumulative or merely duplicates properly admitted evidence. *In re A.H.*, 359 Ill. App. 3d 173, 183-84 (2005).

¶ 107 In this case, the evidence overwhelmingly supported defendant's convictions for vehicular invasion, attempted armed robbery, and escape. At trial, defendant admitted that he attempted to take Zaccaro's keys. He also admitted that he escaped, and the State strongly refuted his necessity defense with evidence that he had been convicted of murder just three days before his escape, for which he faced a lengthy prison sentence. Further, although defendant claimed that his motive for escaping was an innocent one, his self-protection, his conduct as shown by the evidence was less than innocent, as it was extremely violent. During this chaotic escape, he inflicted injuries by stabbing or cutting no less than four people. Rimmer testified defendant entered the bus and threatened Rimmer to drive while holding an

object in his hand. Furthermore, the record demonstrates that only one juror, McSorley, saw defendant's shackles, and upon questioning, McSorley said the shackles would not impede his ability to be fair and that he already knew defendant was being supervised based on the officers who were with defendant. Even assuming any of the other jurors saw or heard defendant's shackles, those jurors were already aware that defendant had been convicted of murder and was in custody for that offense. Furthermore, defendant was also released from his shackles and able to move freely about the courtroom for all portions of the trial except jury selection. Lastly, we are compelled to note that the policy considerations underlying the *Boose* decision and its progeny do not apply with equal force here. Based on the foregoing, we conclude the court's failure to conduct a *Boose* analysis was harmless error.

¶ 108 Contrary to defendant's assertions, the jury's notes and the length of time it spent deliberating does not show the evidence was close. While the jury sent notes during deliberation, those notes merely sought clarification on different terms and expressed that it was deadlocked on the kidnapping charge. However, the jury never stated that it was deadlocked on any of the charges for which defendant was convicted. See *People v. Wilmington*, 2013 IL 112938, ¶ 35 (concluding the evidence was not closely balanced under the first plain-error prong where the jury sent notes during deliberation but the record contained no indication "that the jury at any time had reached an impasse or that the jurors themselves considered this a close case"). Likewise, "the length of time a jury deliberates is not always an accurate indicator of whether the evidence was closely balanced." *People v. Walker*, 211 Ill. 2d 317, 342 (2004). The record does not disclose when the jury's deliberations commenced or finished; however, it shows the jury sent its first note at 2:15 p.m. and the court responded to the last note at 7:12 p.m. Given the number of charges and all of the evidence in this case, nothing about the length of the jurors' deliberations leads us to conclude the evidence was close.

¶ 109 In sum, although the trial court erred when it failed to conduct a *Boose* analysis, we conclude that the error was harmless.

¶ 110 E. Details About Defendant's Prior Murder Conviction

¶ 111 Defendant next contends that the State injected excessive and irrelevant details regarding his prior murder conviction. Specifically, he contends the jury received a certified copy of conviction, which revealed, among other things, that he faced charges in addition to murder, that he was ordered to complete fitness examinations, that he was found guilty of seven counts of murder, that he was sentenced to life in prison, that he lost his appeal, and that he filed a postconviction petition that was denied. Defendant also notes that during cross-examination, the State elicited that he faced charges in addition to murder and asked him whether he personally discharged a firearm that caused death. Defendant was acquitted of aggravated kidnapping and convicted of only one count of first-degree murder. *People v. Reese*, No. 1-07-1681 (2009) (unpublished order under Supreme Court Rule 23). Finally, defendant observes that although he testified he could not recall the jury finding he personally discharged a firearm that killed the victim, the State nonetheless argued that fact during closing argument. Based on all of the foregoing, defendant argues we should reverse and remand for a new trial.

¶ 112 Initially, we agree with the State that defendant invited the introduction of any evidence concerning his prior murder conviction. See *People v. Carter*, 208 Ill. 2d 309, 319 (2003)

(under the doctrine of invited error, a defendant may not request to proceed in one manner and then claim on appeal that the course of action was erroneous). During a hearing on the State's motions *in limine*, the trial court ruled that the State could indicate only that defendant "was in custody on felony charges" and could not introduce defendant's murder conviction in its case-in-chief for purposes of proving motive. The court further ruled that if defendant testified, the State could introduce the murder conviction as impeachment and could introduce a certified copy of conviction and cross-examine defendant on the fact that he was convicted of murder in order to establish his motive. Before defendant testified at trial, the court reminded him that he would be cross-examined by the State, which could use his murder conviction as impeachment. The court told defendant that the State would be able to read in that he was convicted of first-degree murder but would not be able to discuss the facts of the conviction. The court further explained that if defendant testified regarding a "necessity" defense, the State would be able to cross-examine him and rebut his motive with his murder case.

¶ 113 Despite the trial court's admonishments, defendant elected to testify on his own behalf. During his testimony, he maintained that he wanted to escape because he was attacked by guards and he wanted to expose the inhumane conditions in jail. Thus, consistent with the trial court's ruling, the State then introduced defendant's prior murder conviction and the sentence he faced in that case to both impeach his credibility and to rebut his "necessity" defense on the escape charge.

¶ 114 Moreover, even applying the plain-error doctrine, we find no cause for reversal. Under the plain-error doctrine, we may consider an unpreserved claim of error where a clear or obvious error occurred and either (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against defendant, regardless of the seriousness of the error, or (2) the error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence. *People v. Belknap*, 2014 IL 117094, ¶ 48. Our first step in plain-error review is determining whether error occurred. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 115 Evidence of other crimes is generally inadmissible to demonstrate a defendant's propensity to commit crimes. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). However, a defendant's prior conviction may be admitted for impeachment purposes. Ill. R. Evid. 609(a) (eff. Jan. 1, 2011); *People v. Mullins*, 242 Ill. 2d 1, 14 (2011) (citing *People v. Montgomery*, 47 Ill. 2d 510, 516 (1971)). In addition, other-crimes evidence may be admissible to demonstrate motive. *Donoho*, 204 Ill. 2d at 170.

¶ 116 First, the record does not support defendant's claim that the jury was given a copy of the unredacted certified copy of conviction. When the State offered defendant's prior conviction into evidence during rebuttal, it read to the jury only that "defendant was found guilty by a verdict of guilty on the charge of first degree murder on March 19th, 2007." The court admitted the statement of conviction and disposition into evidence but indicated it would give a limiting instruction. Later, outside the presence of the jury, the State expressed that it was "going to send back all of [its] exhibits" to the jury "except for the Grand Jury transcript and the certified copy." The court responded, "Right. The Grand Jury transcript doesn't go back, everything else does." Thus, although the court stated only that the grand jury transcript would not be given to the jury, reading the court's response in conjunction with the State's comment makes clear that the State did not give the jury the certified copy of

conviction. Absent any evidence that the certified copy was actually brought to the jury room, we will not accept defendant's invitation to speculate that it was.

¶ 117 Turning to the State's cross-examination of defendant, we find no impropriety in the State's questioning of defendant as to whether the jury found he personally discharged a weapon. During his testimony, defendant maintained that he wanted to escape out of necessity after being beaten by prison officials. He also testified that he was convicted of a murder he did not commit. Thus, the State properly sought to refute defendant's testimony by establishing that he faced a life sentence. It was not just defendant's murder conviction but also the jury's finding that he personally discharged a weapon that exposed defendant to such a lengthy sentence. Defendant points out that the jury was never told the firearm finding exposed him to a life sentence; however, it was through its questioning of defendant that the State sought to explain that the finding did, in fact, expose defendant to a potential life sentence. In sum, where defendant testified that he tried to escape out of necessity, the State was entitled to present evidence of the jury's finding to establish defendant faced a potential life sentence and sought to escape for that reason and not, as he claimed, to avoid another beating and to expose the inhumane conditions of the jail.

¶ 118 Additionally, we find defendant's argument that it was improper for the State to include in its closing argument the fact that the murder conviction was accompanied by a finding that defendant personally discharged a firearm that caused death to be wholly without merit. Defendant contends that this fact was not admitted by defendant on cross-examination and was not proved up by the State. This argument ignores, however, that this factual assertion was correct and that the certified copy of conviction, which included all the matters defendant was convicted of, was admitted into evidence even though it was not given to the jury. Further, defendant's argument that the prosecutor's passing remark on cross-examination that defendant was charged with murder, "among other things," was improper is also without merit. First, this was a brief, passing remark, and second, this remark may be interpreted to be a reference to the additional allegation concerning the discharge of the firearm.

¶ 119 In sum, we find no error in that regard.

¶ 120 F. Defendant's Waiver of Counsel

¶ 121 Defendant next contends that the trial court failed to substantially comply with Rule 401(a), thereby rendering his waiver of counsel invalid. Acknowledging that he has forfeited review of his claim by failing to object at trial, defendant urges us to consider the matter under the plain-error doctrine. Our first step in plain-error review is to determine whether error occurred. *Thompson*, 238 Ill. 2d at 613.

¶ 122 The sixth amendment guarantees a defendant in a criminal proceeding "both the right to the assistance of counsel and the correlative right to proceed without counsel." *People v. Haynes*, 174 Ill. 2d 204, 235 (1996) (citing *Faretta v. California*, 422 U.S. 806, 833-34 (1975)). A defendant may waive his right to counsel if his waiver is voluntary, knowing, and intelligent. *Id.* To that end, Rule 401(a) sets forth certain admonishments that the trial court must provide before a defendant may be found to have knowingly and intelligently waived counsel. *Id.* at 235-36. Specifically, the court must inform the defendant and determine that he understands (1) the nature of the charge, (2) "the minimum and maximum sentence

prescribed by law, including, when applicable, the penalty to which the defendant may be subjected because of prior convictions or consecutive sentences," and (3) that he has a right to counsel and to have counsel appointed if he is indigent. Ill. S. Ct. R. 401(a) (eff. July 1, 1984). Strict compliance with Rule 401(a) is not always required. *Haynes*, 174 Ill. 2d at 236. Instead, substantial compliance is sufficient to effectuate a valid waiver of counsel if the record shows the defendant made his waiver knowingly and voluntarily and the admonishment he received did not prejudice his rights. *Id.* We review the trial court's compliance with Rule 401 *de novo*. *People v. Wright*, 2015 IL App (1st) 123496, ¶ 46.

¶ 123 Here we find that the trial court substantially complied with Rule 401(a). Defendant's sole argument as to the insufficiency of the court's admonishments is that it failed to inform him that any potential prison sentence would run consecutive to the sentence imposed for his murder conviction. However, even assuming that Rule 401(a)(2) required the court to provide such an admonishment, the record clearly reflects that defendant's waiver of counsel was knowing and voluntary despite the absence of that admonishment. The court informed defendant that he faced a sentence of up to 160 years on two of the attempted murder charges alone. The court also told defendant he was "looking at massive time" if he was convicted. Defendant indicated that he understood. The court then continued by explaining the extended-term sentences that could apply to defendant's other charges. When the court asked defendant whether he understood, defendant responded, "Perfectly, Your Honor, perfectly."

¶ 124 Thus, defendant clearly understood that he faced up to 160 years in prison on just two of the charges alone. He also knew that he was already serving a natural life sentence for his murder conviction. Based on the foregoing, defendant cannot claim that his waiver was not knowingly or intelligently made simply because the court did not inform him that his sentences would run consecutive to his murder sentence. See *People v. Campbell*, 224 Ill. 2d 80, 84 (2006) (the purpose of Rule 401(a) "is 'to ensure that a waiver of counsel is knowingly and intelligently made' " (quoting *Haynes*, 174 Ill. 2d at 241)). Whether defendant believed he would serve the possible 160-year sentence concurrent with or consecutive to the natural life sentence he was already serving, defendant knew that he faced a possible 160-year sentence, which meant that he would spend the rest of his life in prison even if his prior murder conviction was overturned. For this reason, *People v. Koch*, 232 Ill. App. 3d 923 (1992), is distinguishable. There, the trial court admonished the defendant that he could receive a one- to three-year prison sentence but later imposed a five-year extended-term sentence. *Id.* at 925-26. By contrast, the court in this case told defendant he could serve 160 years in prison on just two charges, thereby admonishing defendant that he could spend the rest of his life in prison. Based on the foregoing, we conclude the court substantially complied with Rule 401(a).

¶ 125 G. Extended-Term Sentences

¶ 126 Defendant next argues that the trial court's imposition of extended-term sentences on all of his convictions was improper. The State concedes this error, and agrees that an extended-term sentence was only authorized for those convictions within the most serious class of offenses.

¶ 127 When a defendant has been convicted of multiple offenses of differing classes, the trial court may impose an extended-term sentence only for the conviction or convictions that fall within the most serious class of offenses. *People v. Jordan*, 103 Ill. 2d 192, 206 (1984).

However, extended-term sentences may be imposed "on separately charged, differing class offenses that arise from unrelated courses of conduct." *People v. Coleman*, 166 Ill. 2d 247, 257 (1995). To determine whether multiple convictions arise from unrelated courses of conduct, we must consider "whether there was a substantial change in the nature of the defendant's criminal objective." *People v. Bell*, 196 Ill. 2d 343, 354 (2001). Although defendant failed to challenge his extended-term sentences in the trial court, a sentence or portion thereof that is unauthorized by statute is void and may be attacked at any time or in any court. *People v. Thompson*, 209 Ill. 2d 19, 23, 27 (2004).

¶ 128 As the parties concede, the record in this case reflects that defendant's criminal objective throughout the commission of his crimes was to escape. During sentencing, the trial court expressly rejected the idea that defendant's escape was completed prior to the later offenses. Based on the foregoing, we agree with the parties that defendant's convictions did not arise from unrelated courses of conduct. Therefore, the court could only impose an extended-term sentence on the offenses within the most serious class of felony.

¶ 129 As we have reversed defendant's conviction for Class X vehicular hijacking, the remaining offenses within the most serious class are defendant's Class 1 convictions for vehicular invasion (720 ILCS 5/12-11.1(b) (West 2006)) and attempted armed robbery (720 ILCS 5/8-4(c)(2), 18-2(a)(1), (b) (West 2006)). We therefore affirm the 30-year extended-term sentences imposed on those two offenses, which were made consecutive to the life sentence defendant is serving on his prior murder conviction.

¶ 130 As to defendant's remaining Class 2 felony escape conviction, we conclude that it must be reduced to a nonextended term. Where, as here, "it is clear from the record the trial court intended to impose the maximum available sentence, we may use our power under Illinois Supreme Court Rule 615(b)(4), to reduce the sentence to the maximum nonextended term sentence." *People v. Ware*, 2014 IL App (1st) 120485, ¶ 32. Accordingly, we reduce defendant's sentence for escape to seven years, which is the maximum nonextended term for committing a Class 2 felony. 720 ILCS 5/31-6 (West 2006); 730 ILCS 5/5-8-1(a)(5) (West 2006) (now codified as 730 ILCS 5/5-4.5-35(a)).

¶ 131 III. CONCLUSION

¶ 132 For the reasons stated, we reverse defendant's conviction for aggravated vehicular hijacking, and affirm his convictions for vehicular invasion, attempted armed robbery, and escape. We affirm defendant's 30-year extended-term sentences for vehicular invasion and attempted armed robbery, and reduce his sentence for escape to 7 years.

¶ 133 Reversed in part, affirmed in part, and modified in part.

¶ 134 JUSTICE PALMER, specially concurring in part and dissenting in part:

¶ 135 A. Shackling During Jury Selection–Special Concurrence

¶ 136 I agree with the majority that the trial court should have conducted a *Boose* analysis, but that any error in that regard was harmless. I write separately on this issue to additionally point out that the policy considerations underlying the *Boose* decision and its progeny do not apply with equal force here. At the core of these cases is the recognition that unnecessary

restraint runs afoul of the presumption of innocence and demeans both the defendant and the proceedings. See *Allen*, 222 Ill. 2d at 368 (quoting *In re Staley*, 67 Ill. 2d 33, 37 (1977)). This case however is unique, as the defendant here did not enjoy the presumption of innocence with regard to the charge of first-degree murder. He had already been convicted of that charge and the jury in this case was so informed. It cannot be said therefore that the limited period of shackling he endured deprived him of a presumption of innocence, as he no longer enjoyed that presumption. Nor can it reasonably be argued that it demeaned the defendant or the proceedings, as he was a convicted murderer who also admitted that he attempted to escape from custody. Based on these policy considerations as well as all the other reasons set forth in the majority opinion, I agree that the court's failure to conduct a *Boose* analysis was harmless error.

¶ 137 B. Aggravated Vehicular Hijacking–Dissent

¶ 138 The majority concludes that the defendant's conduct did not constitute aggravated vehicular hijacking because even though the defendant commandeered the bus at knifepoint, he did not literally "take" the vehicle away from the bus driver by dispossessing him of the vehicle. In other words, as the defendant did not throw the driver off the bus but rather forced the driver to drive him some distance at knifepoint, this was not a hijacking. In coming to this conclusion the majority relies on a prior precedent from this district, *McCarter*, which in turn relied on our supreme court's decision in *Strickland*, interpreting the word "takes" in our robbery statute, as well as several time-honored rules of statutory construction. Most respectfully, I cannot concur in this result, as I do not believe that it is mandated by *Strickland*, the legislative history, or rules of statutory construction. The majority's narrow interpretation of the word "takes" here is in sharp contrast to the much broader meaning found in every federal circuit case and every state court case, save Indiana's, that my research has disclosed in which the courts considered almost identical language. I cannot accept the conclusion that the legislature meant Illinois to be an outlier on this issue. The majority's decision to reject the most often accepted interpretation of the word "takes" in this context, as meaning to deprive one of control, violates the rule of statutory construction that we must presume the legislature did not intend an absurd result. I do not believe this to be the true intent of our legislature.

¶ 139 To sustain defendant's aggravated vehicular hijacking conviction, the State was required to show that he committed vehicular hijacking while armed with a dangerous weapon other than a firearm. 720 ILCS 5/18-4(a)(3) (West 2006). A person commits vehicular hijacking when he takes a motor vehicle from the person or immediate presence of another by the use of force or by threatening the imminent use of force. 720 ILCS 5/18-3(a) (West 2006). In arguing that the undisputed facts of his case did not amount to vehicular hijacking, defendant has presented a matter of statutory construction; accordingly, our review is *de novo*. *People v. Brown*, 2013 IL 114196, ¶ 35.

¶ 140 In interpreting a statute, our primary objective is to ascertain and give effect to the legislature's intent. *People v. Baskerville*, 2012 IL 111056, ¶ 18. The best indication of the legislature's intent is the language of the statute, given its plain and ordinary meaning. *People v. Gaytan*, 2015 IL 116223, ¶ 23. In addition, we "may consider the purpose and necessity for the law as well as the consequences that would result from construing the statute one way or the other." *Id.* In construing statutory language, we presume the legislature

"did not intend absurdity, inconvenience, or injustice." *Brown*, 2013 IL 114196, ¶ 36. We also give the language the fullest, rather than the narrowest, meaning possible. *People v. Simpson*, 2015 IL 116512, ¶ 30.

¶ 141 In *McCarter*, the defendant was convicted of aggravated vehicular hijacking based on evidence that he and his brother kidnapped a victim from the victim's driveway by entering the victim's car, armed, while the victim sat in the driver's seat. *McCarter*, 2011 IL App (1st) 092864, ¶ 78. Later, the victim was discovered in his burned out car, still behind the wheel. *Id.* On appeal, the defendant argued the State failed to establish he "took" the victim's car within the meaning of the vehicular hijacking statute. *Id.* ¶ 71. Specifically, he asserted that to "take" a vehicle, he had to physically remove or dispossess the owner from the owner's car. *Id.* ¶ 72. In considering the defendant's argument, our court noted that no published decision had been issued as to whether a defendant could "take" a vehicle, within the meaning of the vehicular hijacking statute, by forcing the victim to drive his car to another location. *Id.* ¶ 74. Accordingly, we looked to the supreme court's decision in *Strickland*, 154 Ill. 2d at 525, in which it considered the "taking" element of the robbery statute (citing Ill. Rev. Stat. 1985, ch. 38, ¶ 18-1). *McCarter*, 2011 IL App (1st) 092864, ¶¶ 75-76.

¶ 142 In *Strickland*, the defendant and his brother ordered a man at gunpoint to drive them to California. *Strickland*, 154 Ill. 2d at 499. The defendant and his brother then got into the backseat of the victim's car, and the victim drove them to the downtown area of Chicago. *Id.* Eventually, the defendant and his brother exited the car and ran away. *Id.* at 500. On appeal, the defendant argued no evidence was presented that he took the vehicle from the victim because the victim remained in operation of the car throughout the time the defendant and his brother were present. *Id.* at 525. In response, the State argued the defendant and his brother effectively controlled the use of the victim's vehicle such that they were in constructive possession of the vehicle. *Id.*

¶ 143 The supreme court agreed with the defendant that the evidence was insufficient to sustain his armed robbery conviction, noting that the offense of robbery was " 'complete when force or threat of force causes the victim to part with possession or custody of property against his will.' " *Id.* at 526 (quoting *People v. Smith*, 78 Ill. 2d 298, 303 (1980)). The *Strickland* court reasoned that no evidence was presented that the victim's car was ever taken from him. *Id.* It noted that although the defendant and his brother's actions "certainly denied [the victim] a large measure of control over his vehicle," the defendant and his brother never removed the vehicle from the victim's actual possession. *Id.* Thus, the supreme court reversed the defendant's armed robbery conviction. *Id.*

¶ 144 In reviewing the *Strickland* decision, the *McCarter* court noted that the supreme court had implicitly rejected the State's argument that "taking control over the victim's car in his presence" was sufficient to effectuate a "taking," as the supreme court gave no weight to the defendant's actions that denied the victim a large amount of control over his car. *McCarter*, 2011 IL App (1st) 092864, ¶ 78. Because, as in *Strickland*, no evidence was presented that the victim was ever dispossessed of his car, the *McCarter* court stated that it was "compelled to conclude that the State failed to establish the taking element." *Id.* ¶ 79. Justice Gordon dissented due to the majority's failure to consider whether burning out the vehicle deprived the owner or his successor in interest of possession or custody of the vehicle. *Id.* ¶ 120 (Gordon, J., dissenting).

¶ 145 The State contends that the *McCarter* court should not have relied exclusively on *Strickland*, which dealt only with the armed robbery statute. The State posits that the decision in *Strickland* was driven in large part by the historical and common law roots of the offense of armed robbery, which included the understanding that the completion of armed robbery required the removal of an item from the victim. According to the State, the vehicular hijacking statute is not beholden to such historical reasoning, given that it was created in 1993. See Pub. Act 88-351, § 5 (eff. Aug. 13, 1993) (creating the offenses of vehicular hijacking and aggravated vehicular hijacking). The State contends the legislature's decision to carve the taking of cars out of the robbery statute and create the vehicular hijacking statute shows it intended vehicular hijacking to be analyzed on its own terms, particularly in light of the fact that vehicles are different than other objects "taken." In sum, the State argues a "hijacking" should not require the physical dispossession of a victim from his vehicle.

¶ 146 In interpreting the federal carjacking statute, the Ninth Circuit recognized that interpreting the "taking" element as requiring the physical relinquishment of a vehicle would be unduly restrictive. See *United States v. DeLaCorte*, 113 F.3d 154, 156 (9th Cir. 1997). Similar to Illinois's hijacking statute, the federal carjacking statute applies when a defendant "takes a motor vehicle *** from the person or presence of another by force and violence or by intimidation, or attempts to do so." 18 U.S.C. § 2119 (2006). In *DeLaCorte*, the defendant pointed a gun at the victim, entered the passenger side of the victim's truck with his companion, and ordered the victim to drive to a specific location. *DeLaCorte*, 113 F.3d at 155. The Ninth Circuit concluded the defendant "took" the victim's truck even though the victim was never forced to leave it. *Id.* at 156. The court reasoned that interpreting a "taking" as requiring the physical relinquishment of a vehicle ignored that a defendant could take control of a vehicle from its owner even though the victim remained in the car and continued to drive it. *Id.* The court further reasoned that the crucial elements of the carjacking statute were "force and violence" and "intimidation," and a victim forced to remain in the car with his assailant, subject to continuing threats and possible violence, often faced greater intimidation and threat of violence than a victim who was immediately released. (Internal quotation marks omitted.) *Id.* Thus, the court concluded the carjacking statute did not require a showing that the victim was forced out of his vehicle. *Id.*; see also *United States v. Gurule*, 461 F.3d 1238, 1243-44 (10th Cir. 2006) (the evidence was sufficient to satisfy the "taking" element of the carjacking statute, despite the defendant's contention that his motive in acquiring possession or control of the vehicle was to receive a "ride," as the defendant's subjective motive was irrelevant and the evidence showed he entered the victim's home and forced the victim at knifepoint and with repeated threats to drive him to a particular location). In addressing defendants' arguments relating to other components of the federal carjacking statute, other circuit courts have likewise affirmed the defendants' convictions where the victims were not in the driver's seat but remained somewhere in the car. See, *e.g.*, *United States v. Castro-Davis*, 612 F.3d 53, 57, 61-62 (1st Cir. 2010) (the victim was transported in the backseat of his car); *United States v. Moore*, 73 F.3d 666, 669 (6th Cir. 1996) (a cab driver was forced out of the cab and into the trunk at gunpoint). The majority acknowledges the holdings of these cases but contrasts them with *Strickland*. However, again, as the State points out, there is substantial federal precedent on carjacking, and *Strickland* is an armed robbery case. The Illinois Supreme Court has not spoken on this issue in this context while these cases have specifically done so.

¶ 147 Several state courts have also recognized that to "take" or "obtain" a vehicle under similar state statutes, a defendant need not remove the victim from the car. See *Williams v. State*, 990 So. 2d 1122, 1123 (Fla. Dist. Ct. App. 2008) (affirming the defendant's conviction for carjacking, which prohibits the taking of a motor vehicle from the person or custody of another, where he jumped into two victims' vehicles and ordered them to drive; a defendant "need not be in physical control of the vehicle" but instead must merely obtain control over the driver through force or violence, threats, or placing the driver in fear); *People v. Duran*, 106 Cal. Rptr. 2d 812, 816 (Cal. Ct. App. 2001) (a "taking" occurred, even though the victims remained in the car, when the defendant imposed his dominion and control over the car by ordering one victim to drive at gunpoint); *Bruce v. State*, 555 S.E.2d 819, 822-23 (Ga. Ct. App. 2001) (affirming the defendant's conviction for hijacking a motor vehicle where he ordered a cab driver to drive him at knifepoint; the concept of "obtaining" a motor vehicle encompassed acquiring control of the vehicle regardless of whether the victim remained inside the vehicle); *People v. Green*, 580 N.W.2d 444, 450 (Mich. Ct. App. 1998) (a victim need not be physically separated from a vehicle for a defendant to "take" the victim's car). In *Winstead v. United States*, 809 A.2d 607, 609, 611 (D.C. 2002), the District of Columbia Court of Appeals affirmed the defendant's conviction for carjacking, concluding the defendant took "immediate actual possession" of the victim's car when, after ordering the victim to get into her car, the defendant ordered her to drive at gunpoint. *Id.* at 611. The *Winstead* court recognized that, "[w]hile [the victim] remained at the wheel, it was [the defendant] who directed her movements and usurped actual physical control of the vehicle. It was no less a carjacking because [the defendant] took his victim along with the car." *Id.*; but see *Burton v. State*, 706 N.E.2d 568, 569 (Ind. Ct. App. 1999) (Concluding that carjacking and kidnapping were distinct offenses, as the carjacking statute "specifically contemplates that the person who takes the vehicle leaves the person from whom the vehicle is taken at the scene. If the occupant remains in the vehicle being taken, there is no crime of carjacking.").[5]

¶ 148 While not binding on our court, "comparable court decisions of other jurisdictions are persuasive authority and entitled to respect." (Internal quotation marks omitted.) *Andrews v. Gonzalez*, 2014 IL App (1st) 140342, ¶ 23. Here, I find the cases holding that a defendant need not remove his victim from the car to be more persuasive than our decision in *McCarter*. As the *McCarter* court recognized, the vehicular hijacking statute is written in the same way that the armed robbery statute is written. However, the physical characteristics of a car make it different than other objects that are taken in a robbery in that a defendant can use a car for his own purposes by merely taking control of the car from the victim rather than taking the actual car away. Furthermore, as the *DeLaCorte* court recognized, in some instances, a victim forced to drive a defendant around at gunpoint will suffer more prolonged fear and danger than a victim removed from his car after only a brief interaction with a defendant. However, if vehicular hijacking required the dispossession of a victim from his car, then a defendant who removed his victim from the car before driving away would be guilty of vehicular hijacking but a defendant who forced his victim to remain in the driver's

[5]I note that Michigan's hijacking statute has been modified since the decision in *Green* and Indiana's hijacking statute has been repealed since the decision in *Burton*. See Ind. Code Ann. § 35-42-5-2 (West 2014); Mich. Comp. Laws Ann. § 750.529a (West 2014). However, to the extent that *Green* and *Burton* considered language similar to our statutory language, I find they continue to provide guidance regarding the meaning we should ascribe to our statute.

seat would not. Viewed another way, if vehicular hijacking applied only when a victim was forced out of the driver's seat, a defendant would have the incentive to force his victim to remain in the driver's seat rather than remove the victim from the car. This cannot have been the legislature's intent. See *Brown*, 2013 IL 114196, ¶ 36 (when interpreting statutory language, we presume the legislature did not intend absurdity or injustice). Moreover, a defendant who forces his victim to drive his vehicle, under the threat or use of force, can cause just as much danger to others on the road as a defendant who actually drives the car himself.

¶ 149 In addition, I find it significant that in removing the taking of vehicles from the robbery statute, the legislature elected to call the offense "vehicular hijacking" instead of, for example, "robbery of a vehicle." See *Alvarez v. Pappas*, 229 Ill. 2d 217, 230-31 (2008) (a statute's title may provide guidance as to a statutory term's meaning if the term is ambiguous). "Hijack" is defined, in relevant part, as "[t]o commandeer (a vehicle or airplane), esp. at gunpoint." Black's Law Dictionary 735 (7th ed. 1999); see also Merriam-Webster's Collegiate Dictionary 548 (10th ed. 1995) (defining "hijack" as, among other things, "to steal by stopping a vehicle on the highway" and "to commandeer (a flying airplane) esp. by coercing the pilot at gunpoint"). Thus, the plain and ordinary meaning of the word "hijack" does not include a requirement that a vehicle be taken away from the victim. Rather, the ordinary meaning of "hijack" includes an understanding that a defendant can "hijack" a vehicle by simply obtaining control of it. It states the obvious that one who commandeers an airplane in midflight is guilty of hijacking even though he has not forced the occupants to leave the plane in midair.

¶ 150 In support of their respective positions, both defendant and the State rely on portions of the General Assembly debates concerning the vehicular hijacking statute. See *Simpson*, 2015 IL 116512, ¶ 30 (if a statute is ambiguous, *i.e.*, subject to two or more reasonable interpretations, we may consider other sources, such as the legislative history, to determine the legislature's intent). It must be noted that the word "taking" in this context is obviously ambiguous as there are several opinions throughout the country and the federal system that ascribe different meanings to the word in this context. The legislative history makes abundantly clear that the legislature intended the vehicular hijacking statute to apply when a victim is removed from his car. Yet, the debates do not warrant the conclusion that removing a victim from a car is the *only* way in which a defendant can commit vehicular hijacking. To construe the statute as requiring the defendant to dispossess the victim of his car would have the effect of weakening and narrowing the scope of the statute, despite the legislature's clear concern with the danger and havoc that vehicular hijacking causes and its desire to send a strong message to would-be hijackers.

¶ 151 It is clear from the debates that our legislature was responding to a serious violent threat that had appeared as "a new genre of crime" and was on the rise. The legislature clearly intended this legislation to be a strong response to this dangerous trend. It does not follow, therefore, that we should take so narrow an interpretation of the statute when it is clear that the legislature intended to enact a strong response to this danger. In fact, I find it most notable that in discussing House Bill 35, Representative Novak described the proposal as being, "stronger than the one that we have on the federal level because the federal carjacking Bill only applies if the defendant was armed with a firearm." 88th Ill. Gen. Assem., House Proceedings, April 20, 1993, at 164 (statements of Representative Novak). While

Representative Novak was referring to the firearm component, I find it disconcerting that the legislator was claiming that Illinois's legislation was stronger than the federal response and yet today the majority is making it weaker than its federal counterpart by way of interpreting the very same language, "takes."

¶ 152 The majority attempts to distinguish the federal hijacking statute from ours by noting that it includes language applying to situations "in which a defendant merely attempts to take a motor vehicle." *Supra* ¶ 72. The majority characterizes this as a glaring difference. I find that this attempt to distinguish these statutes fails for at least two reasons. First, our legislative scheme separately provides for criminal responsibility for the inchoate crime of attempt (720 ILCS 5/8-4(a) (West 2006)) ("A person commits the offense of attempt when, with intent to commit a specific offense, he or she does any act that constitutes a substantial step toward the commission of that offense."). As a result, in Illinois, choate crimes, such as vehicular hijacking, can also be attempted. The only difference is that the federal scheme provides for this in the same paragraph. As a result, I find the contention that the federal statute is broader because of this attempt language to be without basis. Second, and most importantly, the fact that the federal statute includes attempt language is irrelevant for this discussion. None of the federal circuit cases cited above relied on attempt language in their rulings, rather they interpreted the word "takes," which appears in both statutes, in its broadest sense to include the deprivation of control. These cases are in direct conflict to *McCarter*, this conflict cannot be distinguished away, and we should meet the conflict head-on. Tellingly, at oral argument, when asked about the attempt language in the federal statute and whether that is a distinguishing factor, both defendant's own attorney, the assistant State Appellate Defender, and the assistant State's Attorney agreed that it was irrelevant for this discussion. Specifically, defendant's attorney rejected the notion that this crime could be characterized as an attempt and agreed that the federal attempt language did not enter into this calculation. Similarly, the prosecutor stated the attempt language in the federal statute is "a distinction without a relevant difference in this case" and that this language, as well as other additional language therein, were "not really relevant distinctions for the questions before this court." I completely agree with both attorneys. This case has nothing to do with the crime of attempt. The cases I have cited do not refer to any attempt language and neither does *McCarter*. Their holdings only concern the actual taking of a motor vehicle, not the attempt to do so. They are in conflict with our *McCarter* decision. We should resolve the conflict and not be led down the blind alley of attempt.

¶ 153 One last point on the rule of lenity. The majority briefly refers to the rule of lenity and argues that it constrains us to interpret the word "takes" here in such a way as to favor the defendant. However, our supreme court has repeatedly stated "that the rule of lenity must not be stretched so far or applied so rigidly as to defeat the legislature's intent." *People v. Gutman*, 2011 IL 110338, ¶ 43. In *Gutman*, our supreme court cited to the United States Supreme Court's explanation of how the rule of lenity is to be applied as follows.

> " 'Finally, petitioners and the dissent invoke the "rule of lenity." The simple existence of some statutory ambiguity, however, is not sufficient to warrant application of that rule, for most statutes are ambiguous to some degree. Cf. *Smith*, 508 U.S., at 239 ("The mere possibility of articulating a narrower construction ... does not by itself make the rule of lenity applicable"). " 'The rule of lenity applies only if, "after seizing everything from which aid can be derived,"

> ... we can make "no more than a guess as to what Congress intended." ' " *United States v. Wells*, 519 U.S. 482, 499 (1997) (quoting *Reno v. Koray*, 515 U.S. 50, 65 (1995), in turn quoting *Smith, supra*, at 239, and *Ladner v. United States*, 358 U.S. 169, 178 (1958)). To invoke the rule, we must conclude that there is a " ' "grievous ambiguity or uncertainty" ' in the statute." *Staples v. United States*, 511 U.S. 600, 619, n.17 (1994) (quoting *Chapman v. United States*, 500 U.S. 453, 463 (1991)). Certainly, our decision today is based on much more than a "guess as to what Congress intended," and there is no "grievous ambiguity" here. The problem of statutory interpretation in these cases is indeed no different from that in many of the criminal cases that confront us. Yet, this Court has never held that the rule of lenity automatically permits a defendant to win.' *Muscarello v. United States*, 524 U.S. 125, 138-39 (1998).
>
> See also *Santos*, 553 U.S. at 548 (Alito, J., dissenting, joined by Roberts, C.J., Kennedy and Breyer, JJ.) ('the rule of lenity does not require us to put aside the usual tools of statutory interpretation or to adopt the narrowest possible dictionary definition of the terms in a criminal statute')." *Id.*

¶ 154 In applying these lessons from the United States Supreme Court as well as our own supreme court, I cannot find that our statute contains a "grievous ambiguity or uncertainty," especially in light of the fact that so many courts have had no trouble giving similar statutes a broad interpretation. Further, in applying the rule of lenity, we should not put aside the rule of statutory construction that warns us of achieving an absurd result. We are also not required to adopt the narrowest possible dictionary definition of the terms in a criminal statute, especially where as here, the word hijacking is ordinarily defined as the commandeering of a vehicle.

¶ 155 In coming to the conclusion that the majority's decision leads to an absurd legislative result, I have noted that it makes Illinois an outlier on this issue. Additionally, as noted above, it is appropriate to consider the consequences that would result from construing the statute one way or the other. See *Gaytan*, 2015 IL 116223, ¶ 23. Interpreting the statute broadly would put Illinois in line with most jurisdictions, would effectuate the legislature's desire to enact a strong response to a growing problem, and accept the common dictionary definition of hijacking. On the other hand, interpreting the statute as narrowly as defendant and the majority suggests could lead to many absurd scenarios. Suppose a similarly escaping felon suddenly commandeers a shuttle bus at knifepoint and forces the driver to head north to Wisconsin. Throughout the long drive north the driver's life is in constant danger. However, just before the Wisconsin border, say at Russell Road, the offender tells the driver to stop and he jumps off the bus. At this point, under the majority's strict interpretation of the word "takes," the offender has not committed aggravated vehicular hijacking. This is so even though the offender was in complete control of the bus from the moment he entered it. If however, the offender allowed the bus to cross the state line into Wisconsin, then he would have committed federal carjacking. Lastly, if the offender had put the driver off the bus at the outset, and driven it away himself, he would have committed the more serious offense of aggravated vehicular hijacking, even though the bus driver was subjected to far less danger. I cannot agree that this can be interpreted to be our legislature's intent.

¶ 156 In sum, although vehicular hijacking is defined in the same manner that robbery is defined, I agree with the State that the legislature intended vehicular hijacking to be

interpreted on its own terms, particularly given that vehicles are different than objects normally taken during a robbery. For the reasons stated, I would thus respectfully depart from our holding in *McCarter* and conclude that a defendant can "take" a vehicle even if he does not dispossess the victim of the vehicle. As to our supreme court's decision in *Strickland*, I acknowledge that the legislature utilized the same "taking" language as was in issue there. I further acknowledge the rule of statutory construction that we are to presume the legislature was aware of how that language has been construed in the courts. See *supra* ¶ 67. However, I first note that *Strickland* was interpreting the language of our robbery statute and that the vehicular hijacking statute did not yet exist. Further, I find the State's argument persuasive that the legislature saw fit to subsequently enact a separate and distinct offense, entitled vehicular hijacking, dealing only with vehicles and that it should be interpreted on its own terms. In that regard, I also find persuasive the abundant federal precedent that recognizes that a vehicle is uniquely different than other forms of property that could be taken in a robbery. Lastly, I find that the narrow interpretation of the statute utilized by the majority produces an absurd legislative result.

¶ 157 In this case, Rimmer testified that defendant held an object in front of his face and threatened to stab him in the neck if he did not drive, causing him to drive the bus some distance. Under these circumstances, defendant obtained control over Rimmer's vehicle; thus, I would find the evidence was sufficient to establish defendant "took" Rimmer's vehicle. Accordingly, I would affirm defendant's conviction for aggravated vehicular hijacking.

¶ 158 I concur with the remainder of the majority's decision that I have not commented on, except that in light of my position on the hijacking charge, I would find that the vehicular invasion count should be merged.

EOPLE OF THE STATE OF ILLINOIS)
V.)
ILLIS REESE)
fendant

CASE NUMBER 97CR8888
DATE OF BIRTH 09/07/81
DATE OF ARREST 04/10/07
IR NUMBER 1273970 SID NUMBER 04221410

ORDER OF COMMITMENT AND SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

The above named defendant having been adjudged guilty of the offense(s) enumerated below hereby sentenced to the Illinois Department of Corrections as follows:

nt	Statutory Citation	Offense	Sentence	Class
	720-5/18-4(a)(3)	AGG VEH HIJACKING/WEAPON	YRS. 050 MOS.00	X
	and said sentence shall run concurrent with count(s) 009 010 011			
	720-5/12-11.1	UNLAWFUL VEHICULAR INVASION	YRS. 030 MOS.00	1
	and said sentence shall run concurrent with count(s) 005 010 011			
	720-5\8-4(18-2(A)1)	(ATT) ATT(ARMED ROBBERY W/DANGE	YRS. 030 MOS.00	1
	and said sentence shall run concurrent with count(s) 005 009 011			
	720-5/31-6(c)	FELON ESCAPE/PEACE OFFICER	YRS. 014 MOS.00	2
	and said sentence shall run concurrent with count(s) 005 009 010			
			YRS. MOS.	
	and said sentence shall run (concurrent with) (consecutive to) the sentence imposed on:			

On Count ___ defendant having been convicted of a class _ offense is sentenced as class x offender pursuant TO 730 ILCS 5/5-5-3(C)(8).

On Count ___ defendant is sentenced to an extended term pursuant to 730 ILCS 5/5-8-2.

The Court finds that the defendant is entitled to receive credit for time actually served custody for a total credit of 1778 days as of the date of this order

IT IS FURTHER ORDERED that the above sentence(s) be concurrent with
e sentence imposed in case number(s) _____
D: consecutive to the sentence imposed under case number(s)
_____ 02CR2039401 _____ _____ _____

IT IS FURTHER ORDERED THAT ALL COUNTS CONCURRENT TO EACH OTHER. 3 YRS MSR. MTI___

IT IS FURTHER ORDERED that the Clerk provide the Sheriff of Cook County with a copy of this Order and that the Sheriff ke the defendant into custody and deliver him/her to the Illinois Department of Corrections and that the Department take m/her into custody and confine him/her in a manner provided by law until the above sentence is fulfilled.

ENTERED
JAN 27 2012
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

DATED JANUARY 27, 2012 01/27/12

CERTIFIED BY R BANKS
DEPUTY CLERK

JUDGE: WADAS, KENNETH J. 1700

WAP6 01/27/12 16:14:56 CCG N305

A-53

Foreperson

ENTERED
JUDGE

NOV 16 2011

DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

[illegible] jury, find the defendant, Willis Reese, Guilty of Unlawful Vehicular Invasion.

Foreperson

ENTERED
JUDGE

NOV 16 2011

DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

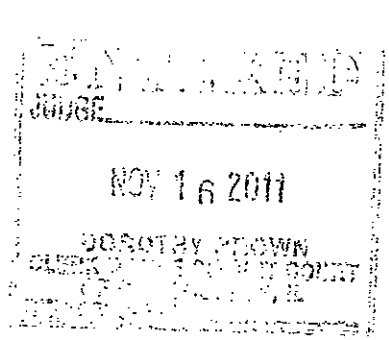
A-55

Escape.

Foreperson

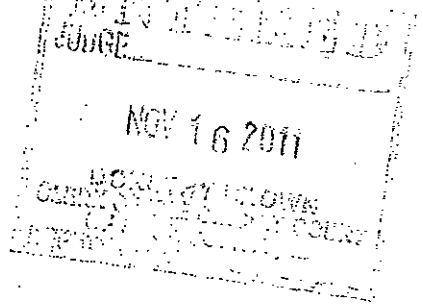
We, the jury, find the defendant, Willie Ross, guilty of Attempt Armed Robbery.

Foreperson



Disarming a Peace Officer.

Foreperson



G.J. No. 520
GENERAL NO. 07 CR- 8683

CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT
CRIMINAL DIVISION
April, 2007

The People of the State of Illinois
v.
Willis Reese
AKA: James Davis

****
* INDICTMENT FOR *
****

ATT 1ST DEG MURDER

A TRUE BILL

Anthony Ramy
Foreman of the Grand Jury

==========

WITNESSES
PO DUGANDZIC

Filed 4-24 20 07
Clerk

Bail $

==========

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C00037

A-59

****

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The APRIL 2007 Grand Jury of the
Circuit Court of Cook County

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

WILLIS REESE
ALSO KNOWN AS JAMES DAVIS

committed the offense of ATTEMPT FIRST DEGREE MURDER

in that HE, WITHOUT LAWFUL JUSTIFICATION, WITH INTENT TO KILL VITO ZACCARO, A PERSON HE KNEW OR REASONABLY SHOULD HAVE KNOWN TO BE A PEACE OFFICER, TO WIT: A COOK COUNTY DEPARTMENT OF CORRECTIONS OFFICER, DID ANY ACT, TO WIT: STABBED VITO ZACCARO ABOUT THE BODY WITH A SHARP METAL OBJECT, WHILE HE WAS IN THE COURSE OF PERFORMING HIS OFFICIAL DUTIES AS A PEACE OFFICER, WHICH CONSTITUTED A SUBSTANTIAL STEP TOWARD THE COMMISSION OF THE OFFENSE OF FIRST DEGREE MURDER, IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 8-4(a)(720-5\9-1(a)(1)), OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

Nolle Pros

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 1)
CHARGE ID CODE: A735000
CASE No. 07CR-8683

****

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

WILLIS REESE
ALSO KNOWN AS JAMES DAVIS

committed the offense of ATTEMPT FIRST DEGREE MURDER

in that HE, WITHOUT LAWFUL JUSTIFICATION, WITH INTENT TO KILL NESTOR FRANCIA, A PERSON HE KNEW OR REASONABLY SHOULD HAVE KNOWN TO BE A MEDICAL ASSISTANT, DID ANY ACT, TO WIT: STABBED STROGER HOSPITAL NURSE NESTOR FRANCIA ABOUT THE BODY WITH A SHARP METAL OBJECT, WHILE HE WAS IN THE COURSE OF PERFORMING HIS OFFICIAL DUTIES AS A MEDICAL ASSISTANT, WHICH CONSTITUTED A SUBSTANTIAL STEP TOWARD THE COMMISSION OF THE OFFENSE OF FIRST DEGREE MURDER,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 8-4(a)(720-5\9-1(a)(1)), OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

Nolle Pros

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 2)
CHARGE ID CODE: A735000
CASE No. 07CR-8683

****

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

WILLIS REESE
ALSO KNOWN AS JAMES DAVIS

committed the offense of AGGRAVATED KIDNAPPING

in that HE, KNOWINGLY BY FORCE OR THREAT OF IMMINENT FORCE CARRIED JAMES RIMMER FROM ONE PLACE TO ANOTHER WITH INTENT SECRETLY TO CONFINE JAMES RIMMER AGAINST HIS WILL AND INFLICTED GREAT BODILY HARM UPON JAMES RIMMER, OTHER THAN BY THE DISCHARGE OF A FIREARM, TO WIT: STABBED JAMES RIMMER ABOUT THE BODY,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 10-2(a)(3) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

Nolle Pros

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 3)
CHARGE ID CODE: 11389
CASE No. 07CR-8683

****

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

	WILLIS REESE
ALSO KNOWN AS	JAMES DAVIS
committed the offense of	AGGRAVATED KIDNAPPING

in that HE, KNOWINGLY BY FORCE OR THREAT OF IMMINENT FORCE CARRIED JAMES RIMMER FROM ONE PLACE TO ANOTHER WITH INTENT SECRETLY TO CONFINE JAMES RIMMER AGAINST HIS WILL WHILE ARMED WITH A DANGEROUS WEAPON OTHER THAN A FIREARM, TO WIT: A SHARP METAL OBJECT,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 10-2(A)(5)

OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

Hung Jury
MS Trial

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 4)
CHARGE ID CODE: 11391
CASE No. 07CR-8683

****

The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

WILLIS REESE
ALSO KNOWN AS JAMES DAVIS

committed the offense of AGGRAVATED VEHICULAR HIJACKING

in that HE, KNOWINGLY TOOK A MOTOR VEHICLE, TO WIT: A 1991 MCI BUS, FROM THE PERSON OR IMMEDIATE PRESENCE OF JAMES RIMMER, BY THE USE OF FORCE OR BY THREATENING THE IMMINENT USE OF FORCE AND HE CARRIED ON OR ABOUT HIS PERSON OR WAS OTHERWISE ARMED WITH A DANGEROUS WEAPON OTHER THAN A FIREARM, TO WIT: A SHARP METAL OBJECT,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 18-4(a)(3)

OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 5)
CHARGE ID CODE: 10066
CASE No. 07CR-8683

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The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

WILLIS REESE
ALSO KNOWN AS JAMES DAVIS

committed the offense of ATTEMPT FIRST DEGREE MURDER

in that HE, WITHOUT LAWFUL JUSTIFICATION, WITH INTENT TO KILL, DID AN ACT, TO WIT: STABBED JAMES HOLMAN ABOUT THE BODY, WHICH CONSTITUTED A SUBSTANTIAL STEP TOWARD THE COMMISSION OF THE OFFENSE OF FIRST DEGREE MURDER,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 8-4(a)(720-5\9-1(a)(1)), OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

Nolle Pros

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 6)
CHARGE ID CODE: A735000
CASE No. 07CR-8683

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The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

WILLIS REESE
ALSO KNOWN AS JAMES DAVIS

committed the offense of ATTEMPT FIRST DEGREE MURDER

in that HE, WITHOUT LAWFUL JUSTIFICATION, WITH INTENT TO KILL, DID AN ACT, TO WIT: STABBED JAMES RIMMER ABOUT THE BODY, WHICH CONSTITUTED A SUBSTANTIAL STEP TOWARD THE COMMISSION OF THE OFFENSE OF FIRST DEGREE MURDER,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 8-4(a)(720-5\9-1(a)(1)), OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

Nolle Pros

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 7)
CHARGE ID CODE: A735000
CASE No. 07CR-8683

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The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

WILLIS REESE

ALSO KNOWN AS JAMES DAVIS

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, INTENTIONALLY OR KNOWINGLY WITHOUT LEGAL JUSTIFICATION CAUSED GREAT BODILY HARM TO VITO ZACCARO, TO WIT: STABBED VITO ZACCARO ABOUT THE BODY, KNOWING HIM TO BE A PEACE OFFICER OF THE COOK COUNTY DEPARTMENT OF CORRECTIONS, WHILE HE WAS ENGAGED IN THE PERFORMANCE OF HIS AUTHORIZED DUTIES AS SUCH AN OFFICER,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-4(A)

OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

Nolle Pros

Contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 8)
CHARGE ID CODE: 99999
CASE No. 07CR-8683

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The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

WILLIS REESE
ALSO KNOWN AS JAMES DAVIS

committed the offense of VEHICULAR INVASION

in that HE, KNOWINGLY, BY FORCE AND WITHOUT LAWFUL JUSTIFICATION ENTERED OR REACHED INTO THE INTERIOR OF A MOTOR VEHICLE, TO WIT: A 1991 MCI BUS, WHILE SAID MOTOR VEHICLE WAS OCCUPIED BY JAMES RIMMER, WITH INTENT TO COMMIT THEREIN A FELONY, TO WIT: ESCAPE,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-11.1(a)

OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 9)
CHARGE ID CODE: 995300
CASE No. 07CR-8683

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The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

WILLIS REESE
ALSO KNOWN AS JAMES DAVIS

committed the offense of ATTEMPT ARMED ROBBERY

in that HE, WITH INTENT TO COMMIT THE OFFENSE OF ARMED ROBBERY, BY USE OF FORCE AND WHILE ARMED WITH A DANGEROUS WEAPON OTHER THAN A FIREARM, TO WIT: A SHARP METAL OBJECT, DID ANY ACT, TO WIT: REACHED FOR VITO ZACCARO'S GUN, WHICH CONSTITUTED A SUBSTANTIAL STEP TOWARDS THE COMMISSION OF THE OFFENSE OF ARMED ROBBERY,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 8-4(720-5\18-2)(a)(1))

OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 10)
CHARGE ID CODE: A12365
CASE No. 07CR-8683

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The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

WILLIS REESE
ALSO KNOWN AS JAMES DAVIS

committed the offense of ESCAPE

in that HE, A PERSON CHARGED WITH THE COMMISSION OF A FELONY, FIRST DEGREE MURDER, UNDER CASE NUMBER 02CR-20394, INTENTIONALLY ESCAPED FROM THE CUSTODY OF COOK COUNTY CORRECTIONAL OFFICER VITO ZACCARO, AN EMPLOYEE OF COOK COUNTY DEPARTMENT OF CORRECTIONS, A PENAL INSTITUION,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 31-6(a)
OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 11)
CHARGE ID CODE: 1350250
CASE NO. 07CR-8683

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The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

WILLIS REESE
ALSO KNOWN AS JAMES DAVIS

committed the offense of DISARMING A PEACE OFFICER

in that HE, WITHOUT THE CONSENT OF VITO ZACCARO, A PERON KNOWN TO HIM TO BE A CORRECTIONAL INSTITUTION EMPLOYEE, TO WIT: A COOK COUNTY DEPARTMENT OF CORRECTIONS OFFICER, TOOK OR ATTEMPTED TO TAKE A WEAPON FROM VITO ZACCARO, WHILE OFFICER WAS ENGAGED IN THE PERFORMANCE OF HIS OFFICIAL DUTIES,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 31-1A

OF THE ILLINOIS COMPILED STATUTES 1992, AS AMENDED AND,

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 12)
CHARGE ID CODE: 1332000
CASE No. 07CR-8683

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The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

WILLIS REESE
ALSO KNOWN AS JAMES DAVIS

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, INTENTIONALLY OR KNOWINGLY WITHOUT LEGAL JUSTIFICATION CAUSED GREAT BODILY HARM TO JAMES RIMMER, TO WIT: STABBED JAMES RIMMER ABOUT THE BODY,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-4(A)

OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

Contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 13)
CHARGE ID CODE: 935000
CASE No. 07CR-8683

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The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

WILLIS REESE
ALSO KNOWN AS JAMES DAVIS

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, INTENTIONALLY OR KNOWINGLY, WITHOUT LAWFUL JUSTIFICATION CAUSED BODILY HARM TO NESTOR FRANCIA, TO WIT: STABBED NESTOR FRANCIA ABOUT THE BODY, KNOWING HIM TO BE AN EMPLOYEE OF A UNIT OF LOCAL GOVERNMENT, COOK COUNTY, TO WIT: A NURSE AT STROGER HOSPITAL, WHILE HE WAS ENGAGED IN THE PERFORMANCE OF HIS AUTHORIZED DUTIES AS SUCH AN EMPLOYEE,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-4(b)(18)

OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 14)
CHARGE ID CODE: 13739
CASE No. 07CR-8683

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The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

WILLIS REESE
ALSO KNOWN AS JAMES DAVIS

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, INTENTIONALLY OR KNOWINGLY WITHOUT LEGAL JUSTIFICATION CAUSED BODILY HARM TO JAMES HOLMAN WHILE USING A DEADLY WEAPON, OTHER THAN BY THE DISCHARGE OF A FIREARM, TO WIT: STABBED JAMES HOLMAN ABOUT THE BODY WITH A SHARP METAL OBJECT, IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-4(b)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 15)
CHARGE ID CODE: 935100
CASE No. 07CR-8683

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The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

WILLIS REESE
ALSO KNOWN AS JAMES DAVIS

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, INTENTIONALLY OR KNOWINGLY WITHOUT LEGAL JUSTIFICATION CAUSED BODILY HARM TO JAMES RIMMER WHILE USING A DEADLY WEAPON, OTHER THAN BY THE DISCHARGE OF A FIREARM, TO WIT: STABBED JAMES RIMMER ABOUT THE BODY WITH A SHARP METAL OBJECT, IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-4(b)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 16)
CHARGE ID CODE: 935100
CASE No. 07CR-8683

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The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

WILLIS REESE
ALSO KNOWN AS JAMES DAVIS

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, INTENTIONALLY OR KNOWINGLY WITHOUT LEGAL JUSTIFICATION CAUSED BODILY HARM TO NESTOR FRANCIA WHILE USING A DEADLY WEAPON, OTHER THAN BY THE DISCHARGE OF A FIREARM, TO WIT: STABBED NESTOR FRANCIA ABOUT THE BODY WITH A SHARP METAL OBJECT, IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-4(b)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 17)
CHARGE ID CODE: 935100
CASE No. 07CR-8683

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The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

WILLIS REESE
ALSO KNOWN AS JAMES DAVIS

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, INTENTIONALLY OR KNOWINGLY WITHOUT LEGAL JUSTIFICATION CAUSED BODILY HARM TO VITO ZACCARO WHILE USING A DEADLY WEAPON, OTHER THAN BY THE DISCHARGE OF A FIREARM, TO WIT: STABBED VITO ZACCARO ABOUT THE BODY WITH A SHARP METAL OBJECT, IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-4(b)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 18)
CHARGE ID CODE: 935100
CASE No. 07CR-8683

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The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

WILLIS REESE
ALSO KNOWN AS JAMES DAVIS

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, INTENTIONALLY OR KNOWINGLY CAUSED BODILY HARM TO NESTOR FRANCIA, TO WIT: STABBED NESTOR FRANCIA ABOUT THE BODY, KNOWING HIM TO BE A MEDICAL ASSISTANT, TO WIT: A STROGER HOSPITAL NURSE, WHILE HE WAS ENGAGED IN THE EXECUTION OF HIS OFFICIAL DUTIES,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-4(B)(7)

OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 19)
CHARGE ID CODE: 935650
CASE No. 07CR-8683

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The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

WILLIS REESE
ALSO KNOWN AS JAMES DAVIS

committed the offense of INTIMIDATION

in that HE, WITH INTENT TO CAUSE JAMES RIMMER TO PERFORM AN ACT, TO WIT: DRIVE A BUS, COMMUNICATED DIRECTLY TO JAMES RIMMER IN PERSON A THREAT TO PERFORM WITHOUT LAWFUL AUTHORITY THE INFLICTION OF PHYSICAL HARM UPON JAMES RIMMER,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-6 (a)(1)

OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 20)
CHARGE ID CODE: 960000
CASE No. 07CR-8683

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The Grand Jurors chosen, selected and sworn, in and for the County of Cook, in the State of Illinois, in the name and by the authority of the People of the State of Illinois, upon their oaths present that on or about MARCH 22, 2007 at and within the County of Cook

WILLIS REESE
ALSO KNOWN AS JAMES DAVIS

committed the offense of AGGRAVATED BATTERY

in that HE, IN COMMITTING A BATTERY, INTENTIONALLY OR KNOWINGLY, WITHOUT LEGAL JUSTIFICATION, CAUSED BODILY HARM TO JAMES RIMMER, TO WIT: STABBED JAMES RIMMER ABOUT THE BODY, KNOWING THAT HE WAS A BUS DRIVER OF A TRANSPORTATION FACILITY ENGAGED IN THE BUSINESS OF TRANSPORTATION OF THE PUBLIC FOR HIRE,
TO WIT: COLONIAL COACH LINES, WHILE HE WAS PERFORMING IN SUCH CAPACITY,

IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 12-4(b)(9) OF THE ILLINOIS COMPILED STATUTES 1992, AS AMENDED AND,

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

(COUNT No. 21)
CHARGE ID CODE: 935900
CASE No. 07CR-8683

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341 (a) and (b). The length of this brief, excluding the pages containing the Rule 341 (d) cover, the Rule 341 (h)(1) statement of points and authorities, the Rule 341 (c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 37 pages.

By: 

ANNETTE COLLINS,
Assistant State's Attorney