No. 120011

IN THE

SUPREME COURT OF ILLINOIS

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

REPLY BRIEF OF PLAINTIFF-APPELLANT, CROSS-APPELLEE PEOPLE OF THE STATE OF ILLINOIS

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ORAL ARGUMENT REQUESTED

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I.
THE APPELLATE MAJORITY'S INTERPRETATION OF THE TERM "TAKES" IN THE VEHICULAR HIJACKING STATUTE IS OVERLY NARROW AND CONTRARY TO THE PLAIN LANGUAGE AND PURPOSE OF THE STATUTE.

As demonstrated in the People's Opening Brief, the appellate majority's reading of the vehicular hijacking statute is overly narrow and creates an absurd result. According to the appellate majority, the actual commandeering or "hijacking" of a vehicle is excluded from the reach of the vehicular hijacking statute because in such a case, 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; see also 720 ILCS 5/18-3(a) (vehicular hijacking) and 720 ILCS 5/18-4(a)(3) (aggravated vehicular hijacking). This reasoning ignores not just the plain language and title of the statute, but also undermines its purpose and excludes the most dangerous conduct from its scope.

As this Court has repeatedly held, the judiciary should not interpret a statute to be inconsistent with the legislature's intent or construe a statute in such a way as to create absurdity. See People v. Hanna, 207 Ill. 2d 486, 497-98 (2003); Hall v. Henn, 208 Ill. 2d 325, 330 (2003); People v. Johnson, 2017 IL 120310, ¶ 15. Here, the appellate majority's interpretation of the "taking" provision in the vehicular hijacking statute overlooked these canons of construction and created the absurd result that the actual hijacking of a car is exempt from the reach of the statute unless the driver is completely dispossessed of the vehicle. 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."); People v. Perry, 224 Ill. 2d 312, 330 (2007) ("entirely appropriate" to look to dictionary in statutory construction).

Defendant responds that the appellate majority's opinion correctly construed the term "takes" in the vehicular hijacking statutes as *identical* to the word "takes" in the armed robbery statute. (Def. Br. 8) According to defendant, to commit the offense of vehicular hijacking, an offender must "physically dispossess" the victim of the vehicle, because "hijacking is simply robbery of a car." (Def. Br. 20, 24) Like the appellate court majority, defendant relies predominantly on this Court's decision in People v. Strickland, 154 Ill. 2d 489, 552-26 (1992), where this Court rejected a claim that the defendants had committed the offense of armed robbery of a car by forcing the owner to drive, at gunpoint, with the defendants as passengers, because "the automobile was never removed from [the victim's] actual possession" and thus not "taken" from driver. Strickland, 154 Ill. 2d at 526. (Def. Br. 8, 10-11, 15-17, 24, 26-27)

But Strickland does not control the interpretation of the vehicular hijacking statute because Strickland addressed only the contours of the armed robbery statute, a distinctly separate statute grounded in common law, unlike the vehicular hijacking statute, which proscribes a crime of more recent vintage. Strickland's holding was driven in large part by the common law understanding of an armed robbery -- that the property must be taken away from the victim:

> "'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." (Emphasis added.) Strickland, 154 Ill. 2d at 525-26.

Vehicular hijacking, in contrast, does not share these same roots, serves a different purpose, and addresses different conduct than the crime of armed robbery. Because the vehicular hijacking statute is distinct from armed robbery and was intended to address a different crime, it must be analyzed on its own terms, keeping in mind the purpose of that crime and the intent of the legislature in fashioning the crime of vehicular hijacking. People v. LaRue, 298 Ill. App. 3d 89, 91 (1st Dist. 1998) ("armed robbery and aggravated vehicular hijacking statute are not substantially the same"). Accordingly, prior construction of the armed robbery statute should not control here. 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.)).

Because Strickland's construction of the term "takes" in the armed robbery statute was dependent on the common law roots of that offense, its analysis does not control the construction of that term in the context of the hijacking of vehicles. See Strickland, 154 Ill. 2d at 525-26, citing Smith, 78 Ill. 2d at 302-04 (holding that 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"); see also People v. Campbell, 234 Ill. 391, 393 (1908) ("there

must be an actual severance of the property from the person to constitute robbery"). The common law offense of robbery must be read consistent with its common law roots, but vehicular hijacking owes no such allegiance. See 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.").

Defendant does not address this point. Instead, he characterizes vehicular hijacking as "simply robbery of a car." (Def. Br. 20) This is incorrect. The vehicular hijacking statute, effective in 1993, addressed the increasing frequency of violent acts occurring as offenders were trying to steal vehicles while owners were in or adjacent to their cars. 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. 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."). Had the legislature only intended to create an offense identical to a "robbery" or "armed robbery" of a vehicle, with the same construction of the word "takes" (per Strickland) but just with a higher penalty, no separate offense of vehicular hijacking would have been necessary -- it already would have been encompassed within the robbery statute; the legislature simply could have, and would have, increased the penalty for robbery of a vehicle.

The fact that the legislature created the new offense of vehicular hijacking, not "robbery of a vehicle," is highly significant. While the legislature borrowed language from the robbery statute, it was certainly aware that "hijacking" represented a distinct offense and

that vehicular hijacking, therefore, did as well. For example, 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) (2010); People v. Ballard, 206 Ill. 2d 151, 210-11 (2002) (noting aggravating factors which render a first degree murder death eligible, including "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) (citing Ill. Rev. Stat. 1973, ch. 38, par. 1005-8-1A). As recognized by the dissenting Justice in this case, "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." Reese, 2015 IL App (1st) 120654, ¶ 149 (Palmer, J., dissenting).

In this respect, defendant, like the appellate majority, overlooks the fact that the vehicular hijacking statute deals exclusively with vehicles, which can be "hijacked" and thus are different than other possessions 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. Accordingly, the separate statute of vehicular hijacking was created to address the distinct and particular crime of "carjacking."

Defendant insists that, because of the similarities and alleged "relationship" between armed robbery and vehicular hijacking, the two statutes must be read "harmoniously." (Def. Br. 20) He also suggests that the title of the vehicular hijacking statute means little or nothing. (Def. Br. 13) Addressing these points in turn, the two statutes can be read "harmoniously" without appending all of armed robbery's common law jurisprudence onto the vehicular hijacking statute. The definitions of the term "takes" in the armed robbery and vehicular hijacking statutes need not conflict. While defendant now accuses the People of

offering contradictory definitions of the single term "takes," the People have never said that the term "takes" means two different things; rather, the distinction between the two statutes is in *how a particular item*, in this case a vehicle, is taken. (Def. Br. 10-12)

As noted earlier, the legislature enacted the vehicular hijacking statute to address the increasing incidents of offenders stealing and/or "hijacking" cars from unsuspecting citizens, and simultaneously amended the armed robbery statute to remove vehicles from its reach. Public Act 88-351 (eff. Aug. 8, 1993). See 88th Ill. Gen. Assem., Sen. Proc., April 15, 1993, at 281-85; May 11, 1993, at 24-26. See also 88th Ill. Gen. Assem., House Proc., April 20, 1993, at 163-64. By creating vehicular hijacking as a new offense and by concomitantly removing vehicles from the armed robbery statute, the legislature recognized that the "taking" of a vehicle may be accomplished by other means that do not necessarily involve actually depriving the person of the vehicle, as in a robbery. Public Act 88-351 (eff. Aug. 8, 1993). For example, a vehicle may be taken by hijacking, by forcing the victim to drive the offender to another location and while not depriving the victim of actual physical possession of the vehicle.

Likewise, the title of the offense is not, as defendant would have it, irrelevant to the inquiry. Certainly, the title of a statute may not be used to "limit" the reach of the statute because a title is, in most cases, simply a shorthand description of what the offense is meant to address. Bd. of R.R. Trainmen v. Balt. & Ohio R.R., 331 U.S. 519, 528-29 (1947) (because title may not encompass everything the statute is meant to address, "the title of a statute and the heading of a section cannot limit the plain meaning of the text"). But, here, the title does not *limit* in any manner the plain meaning of the vehicular hijacking offense. Rather, a fair interpretation of the statute should be informed by the title chosen by the

legislature. That title -- "vehicular hijacking" (and not "armed robbery of a vehicle") -- bears significant weight in ascertaining the intent of the legislature. See Warren, 173 Ill. 2d at 357 ("In construing a statute, every part, including its title, must be considered together.").

Contrary to defendant'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 take the car away from the victim. (Def. Br. 10-13) That narrow construction comes from Strickland, not from the actual language of the vehicular hijacking statute. All that either of the vehicular hijacking statutes (aggravated vehicular hijacking and vehicular hijacking) 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 itself requires that the term "takes" must mean that the victim cannot remain behind the wheel or inside the vehicle when the vehicle is taken from him. As noted, the very definition of "hijack" involves the commandeering of a vehicle and forcing it to go to a different destination. To "take" a vehicle by hijacking thus plainly means to commandeer or seize that vehicle by either driving it oneself or by forcing the owner or driver to drive it. 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").

Defendant attempts to limit the reach of the "vehicular hijacking" statute by construing the vehicular hijacking statute only as a smaller set of, or adjunct to, the armed robbery statute. (Def. Br. 18-20) He assumes that the legislature was aware of Strickland when it created the vehicular hijacking statute and intended to import into it the common

law construction of robbery, including its narrow construction of the term "takes." (Def. Br. 14-16) His premise, as discussed earlier, is flawed because the two statutes, vehicular hijacking and armed robbery, do not address the same conduct.

But even if it were presumptively aware of Strickland, the legislature clearly viewed the dangers of "carjackings" as different from those posed by other types of robberies, thus precipitating the creation of a separate vehicular hijacking statute. 88th Ill. Gen. Assem., Senate Proceedings, April 15, 1993, at 281 (sponsor introducing bill stating, "[t]his is the carjacking legislation" and never mentioning the crime of "robbery"). It does not necessarily follow, therefore, that the legislature imported Strickland's construction into its new vehicular hijacking statute. In fact, the legislature's creation of a *new* offense, separate and apart from armed robbery, shows that the legislature believed that the taking of a car *via* hijacking was different than the robbery of other possessions. Strickland played no role in this process.

Another indicator that the legislature intended the vehicular hijacking statute to stand apart from the robbery statute is in its inclusion of language in the former that the vehicle must be taken "from the person or the *immediate* presence" of the victim. 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"). Defendant says that this proves that the vehicular hijacking statute is narrower than the armed robbery statute, but still with the same construction of the term "takes." (Def. Br. 22) But it is more reasonable to conclude that the legislature was not actually creating a more narrow robbery statute, but instead creating a new statutory prohibition meant to address a new, very dangerous type of crime. The

debates bear this out. See 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 a vehicle 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, 1994, 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; it would be contrary to the legislative purpose behind the statute to exclude instances such as here, where the defendant took possession of the vehicle while the victim remained inside it.

Likewise, defendant's claim that there is a judicially "settled meaning" to the term "takes" as it relates to vehicles, and as used in Strickland, is also misplaced because the legislature chose to create a "vehicular hijacking" statute separate from robbery. (Def. Br. 16-17) While defendant argues that the legislature "adopted this Court's interpretation of Strickland of what it means to take a car," his position would be legitimate only if the legislature had left the robbery statute intact with a higher penalty for vehicles or had written another "armed robbery" statute. (Def. Br. 16) Only in that case could the prior judicial construction of the armed robbery statute control, because the prior judicial construction would be *of the same statute*. Contrary to the instant scenario, all of defendant's cited cases involved situations, not present here, where prior judicial construction of a *particular statute* informed later interpretation *of that very statute*. People v. Villa, 2011 IL 110777, ¶¶ 27-30 (addressing effect of amendment to same statute wherein language was previously construed by courts); Dennis E. v. O'Malley, 256 Ill. App. 3d 334, 343-44 (1st Dist. 1993) (addressing re-enacted replacement statute where predecessor statute had been previously construed);

Harris Trust & Sav. Bank v. Barrington Hills, 133 Ill. 2d 146, 155 (1989) ("When a statute has been judicially considered, the sections that have been construed by the court keep their same meaning in any subsequent amendments, absent a clear legislative intent to the contrary"); Frank v. Salomon, 376 Ill. 439, 446 (1941) (same). Where, as here, the judicial construction is of another, separate statute, the prior construction should not control.

Moreover, there was no legislative "acquiescence" in any construction of the term "takes" in the vehicular hijacking statute simply because one appellate court decision in 2011, People v. McCarter, 2011 IL App (1st) 092864, incorrectly narrowed the vehicular hijacking statute by exclusively relying on Strickland. (Def. Br. 17) 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 rigid rule of law. Perry, 224 Ill. 2d at 331. And the first and only decision to apply Strickland's specific interpretation of the armed robbery statute to the vehicular hijacking statute since McCarter in 2011, was the appellate decision in this case. There has been no substantial period of time since McCarter was decided for the legislature to have "acquiesced" in that decision.[1] After all, the legislature did amend the armed robbery statute after this Court's opinion in Strickland, and the legislature's decision to

[1]Notably, the McCarter decision's holding that the car must be taken away from the victim is inconsistent with an even earlier appellate case, People v. Phyfiher, 361 Ill. App. 3d 881, 885 (1st Dist. 2005), where the defendant stole the car while the victim was not only in the presence of his car, but physically holding on to the handle of his car as the vehicular hijacking was in progress. Under these circumstances, it cannot be said that the legislature "acquiesced" to McCarter's construction, anymore that it can be said that it "acquiesced" to Phyfiher's.

create a *new* offense entitled vehicular *hijacking* should be given significant weight.

Nothing in the legislative history of the vehicular hijacking offense warrants the narrow reading ascribed by defendant. (Def. Br. 18-20) In the 1993 debates, one year after Strickland, there is no mention of Strickland and 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. 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."). 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 state, "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"). As 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).

Defendant also cites a Committee Note to Illinois Pattern Jury Instructions, Criminal, Nos. 14.21-14-.23, claiming that it supports his construction of the vehicular

hijacking statute's term "takes." (Def. Br. 23) But that Note neither discussed the term "takes" nor suggested that that term's use in the armed robbery statute controls the vehicular hijacking statute. Further, the IPI Committee's recognition that the two statutes, armed robbery and vehicular hijacking, "closely resemble" each other does not defeat the People's argument. The People have never denied that the language used in the two statutes was similar. (Peo. Br. 30, acknowledging that "the armed robbery statute may offer a close analog to the vehicular hijacking statute in other respects," yet arguing that Strickland's interpretation of the term "takes" in the armed robbery statute "should not control this inquiry") But the appellate majority's interpretation of the term "takes" results in absurdity, such that the type of "hijacking" or commandeering of a vehicle, as here, would fall outside the purview of the vehicular hijacking statute. See, *e.g.*, People v. Brown, 2013 IL 114196, ¶ 36 ("a court presumes that the General Assembly, in its enactment of legislation, did not intend absurdity, inconvenience, or injustice").

Certainly, no statutory construction principle, not the doctrine of *in pari materia* or lenity allows statutes to be read in such a manner to occasion an absurd result. See Abruzzo v. City of Park Ridge, 231 Ill. 2d 324, 332 (2008) ("When the plain language of two statutes conflicts, we will attempt to construe them together, *in pari materia*, if such an interpretation is reasonable. [citation] Legislative intent remains the foremost consideration, however."). Yet defendant invokes both. (Def. Br. 20-21, 28-30) Defendant's view that the doctrine of *in pari materia* drives the analysis again ignores the legislature's view of vehicular hijacking as different from robbery. (Def. Br. 20) The two statutes do not deal with the same subject matter, despite their similarities in language, and thus that doctrine is inapplicable. See People v. Rinehart, 2012 IL 111719, ¶ 26 ("the maxim of *in pari materia*" applies when

"two statutes, or two parts of one statute, concerning the same subject must be considered together in order to produce a 'harmonious whole'"). And defendant's invocation of the rule of lenity likewise fails because that rule cannot be used to undermine the primary rule of statutory construction, to which all other canons and rules are subordinate, that a court must ascertain and give effect to the intent of the legislature. People v. Jackson, 2011 IL 110615, ¶21.

Defendant's coupling of his lenity argument with a due process challenge similarly fails. Defendant appears to invoke a "due process" right to the incorrect construction of a statute under a notice-type theory, evidently claiming that the vehicular hijacking statute is "ambiguous" (and thus somehow unconstitutional) simply because these two appellate courts have incorrectly followed the inapposite Strickland case. (Def. Br. 29) Defendant does not explain further. But just because there may be disagreement among the appellate courts, or just because some courts may have construed statutory language incorrectly does not mean that the particular language is "ambiguous." See People v. Smith, 2016 IL 119659, ¶¶ 22-28 (rejecting lower court's finding that language was ambiguous and thus rejecting that court's application of the rule of lenity).

Despite the Illinois legislature's express nod to the federal carjacking statute as its guide, defendant also now argues that "it makes more sense to rely on Illinois robbery jurisprudence." (Def. Br. 24-25) He invokes support from Strickland, McCarter, the majority opinion below, and the IPI Committee Notes. (Def. Br. 24-25) But as discussed earlier herein, the armed robbery statute is distinct and cannot be the sole guide, McCarter and the majority opinion below were wrong to rely on Strickland, and the IPI Committee Notes only addressed the common mental state, not the term "takes." None of defendant's

sources compel the use of robbery jurisprudence as the sole guide. Accordingly, the People suggested looking to the federal carjacking statute because it was the most logical comparator and was itself one of the guides used by the Illinois legislature. See 88th Ill. Gen. Assem., House Proceedings, April 20, 1993, at 163-64. These points were ably made by the dissenting Justice in this case. See Reese, 2015 IL App (1st) 120654, ¶¶ 146-48 (dissent, discussing federal and state cases interpreting other carjacking statutes, which also use the work "take," to include the conduct proven here). While neither federal nor out-of-state jurisprudence "controls" the inquiry, it certainly is far more rational to conclude that a "hijacking" involving the commandeering of a shuttle bus by placing a shank to the driver's neck and forcing him to drive is covered by our "vehicular hijacking" statute.

As a final matter, defendant does not adequately address the confusion engendered by the appellate majority's analysis, which left it unclear as to how, specifically, a defendant would actually "take" a vehicle from a victim under its theory if not by removing the victim from the vehicle. 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": "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"). Agreeing with the appellate majority, defendant suggests, without explanation, that a vehicle could be "taken" from the victim while the victim is still inside because there is a difference between "taking an item from a person" and "taking a person from an item." (Def. Br. 27-28) Defendant, however, offers no comment on the fact that this interpretation appears to be foreclosed by Strickland itself and is certainly contrary

to how the term "takes" has been traditionally construed in armed robbery jurisprudence. Both the Strickland decision (and for that matter the crime of armed robbery) require that the item taken be actually removed from the victim's possession. See Strickland, 154 Ill. 2d at 526 ("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 [], the automobile was never removed from [the victim's] actual possession."). See also 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.

Indeed, if Strickland and armed robbery jurisprudence must control the inquiry into the vehicular hijacking statute, then the appellate court majority should not have said that the vehicle need not be completely taken away from the victim. The point being that the need for deviation from Strickland and other armed robbery jurisprudence should have suggested to the appellate majority that Strickland did not "compel" any result here, and that thus, at the very least, armed robbery jurisprudence should not control. Certainly, if the appellate majority had reason to depart from 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.

Ultimately, the whole point of the People's argument is that the vehicular hijacking statute should be analyzed on its own terms. And it should, consistent with its language and the legislative intent behind its passage, include conduct, as here, 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. While defendant tries to salvage the appellate majority's analysis by suggesting that the meaning of the phrase "takes from" requires "physical taking," there is nothing in the statute to prevent a reasonable interpretation of the phrase "takes from" to include an actual hijacking, where the offender takes the vehicle from the victim by forcing the victim to drive the car under threat of physical harm. (Def. Br. 30) This interpretation is consistent with the language of the statute, gives full consideration of the legislative intent behind the statute, and does not, like defendant's and the appellate majority's view, ignore the title of the offense.

ARGUMENTS IN RESPONSE TO DEFENDANT-APPELLEE'S REQUESTS FOR CROSS-RELIEF

II.
DEFENDANT COMMITTED THE OFFENSE OF VEHICULAR INVASION WHEN HE RAN ONTO THE BUS, THREATENED THE BUS DRIVER WITH A SHANK, AND THEN STABBED THE BUS DRIVER AFTER THE BUS STOPPED ONLY MOMENTS LATER.

In a request for cross-relief, defendant challenges his conviction for vehicular invasion on the basis that he did not "enter" the vehicle "by force." (Def. Br. 31) He admits

using and threatening force once on the bus, but contends that his use of force occurred *after* he entered the bus, and insists that he "simply entered through the open doors of the parked bus." (Def. Br. 31) The appellate court correctly rejected this argument. People v. Reese, 2015 IL App (1st) 120654, ¶¶ 84-90.

The vehicular invasion statute provides, "A person commits vehicular invasion who knowingly, by force and without lawful justification, enters or reaches into the interior of a motor vehicle *** while such motor vehicle is occupied by another person or persons, with the intent to commit therein a theft or felony." 720 ILCS 5/12-11.1 (2006). The indictment in this case charged defendant with that offense in that he knowingly and by force entered the bus with the intent to commit the felony offense of escape. (C. 46)

Defendant's entry onto the bus was forceful and unlawful. The evidence showed that defendant "jumped" or "ran" onto the bus and immediately stood over the driver with his left hand on the driver's seat and his right hand, holding a shank, in front of the driver's face. (R.QQQ121-22) Certainly, it was not unreasonable for the jury to find that the manner in which defendant entered the bus was "forceful" and without lawful justification.

Defendant's citation to People v. Bargo, 64 Ill. App. 3d 1011 (1st Dist. 1978), and People v. Currie, 84 Ill. App. 3d 1056 (1st Dist. 1980), is unavailing. (Def. Br. 32) If anything, both cases show why, by comparison, defendant's entry in this case was indeed forceful. In Bargo, the only issue was whether police violated the fourth amendment when they entered the defendant's residence by pretending to be postmen delivering a package. Bargo, 64 Ill. App. 3d at 1012. The circuit court granted the defendant's motion to suppress the seized evidence on the ground that the manner of execution of the warrant was "a sham and a subterfuge." Id. The appellate court reversed, noting that although

statute prohibited "forced entries to execute search warrants without a prior announcement of authority and purpose, unless at the time of entry there exist circumstances which excuse compliance with this requirement," the entry into the home was valid because it was preceded by subterfuge, not force. Id. at 1012-13. Currie is similarly inapplicable, where that case involved a putative "defense of dwelling" affirmative defense. During execution of a search warrant, after knocking and announcing his office, a police officer displayed his badge while simultaneously pushing on a door opened by the defendant, who immediately started shooting at the police officers. Although defendant testified that he shot at police officers when they knocked and tried to enter his home because he believed they were forcing their way in, the jury rejected the defense of dwelling claim and the appellate court affirmed. Currie, 84 Ill. App. 3d at 1065 ("The testimony of [the officers] established they had properly announced their office when at the front door and did not use force or violence to enter the house. Even accepting defendant's testimony to be true, the sudden pushing of a door into another person does not justify as a response firing three gun shots at the person on the other side of the door"); see also 720 ILCS 5/7-2(a)(1) (2006) (person justified in the use of deadly force "*only if the entry is made or attempted in a violent, riotous, or tumultuous manner* and he reasonably believes that such force is necessary to prevent an assault upon, or an offer of personal violence to, him or another in the dwelling").

Neither Currie nor Bargo involved the vehicular invasion statute; to that extent their assistance is limited. Nevertheless, in contrast to the instant case, both illustrate instances where no force was used. Here, defendant did not just walk onto the bus nor did he ask to enter the bus, but ran and jumped onto it during his escape and immediately placed a shank

to the driver's neck. Contrary to defendant's theory, force is not necessarily synonymous with physical violence. See, *e.g.*, People v. Ryan B. (In re Ryan B.), 212 Ill. 2d 226, 232 (2004) (addressing child exploitation statute, citing Webster's Third New International Dictionary 757 (1993) definition of "coerce" as "to restrain, control, or dominate, nullifying individual will or desire (as by force, power, violence, or intimidation)"). While defendant did not use violence to enter the bus, he certainly entered by force without lawful justification. That is all the statute requires.

People v. Isunza, 396 Ill. App. 3d 127 (2d Dist. 2009), is instructive. There, the defendant was found guilty of vehicular invasion based on his act of reaching into a vehicle's open window and punching the driver. The appellate court found that the fact that the window was open was not dispositive. Id. at 131. While defendant distinguishes the entry and force in Isunza as "one and the same," he fails to acknowledge that the Isunzo court reached its conclusion by recognizing that "force" is defined as "[p]ower dynamically considered, that is, in motion or in action; constraining power, compulsion; strength directed to an end." Id. at 131, quoting Black's Law Dictionary 644 (6th ed. 1990). The court then found, "[b]ased upon the above definition of force, we believe that there was sufficient evidence to establish that [the defendant] used force to reach into [the victim's] vehicle. [The defendant's] actions indicate that, in reaching into the vehicle, he used his strength directed to a specific end, that being to punch [the victim] in the head." Isunza, 396 Ill. App. 3d at 131. As in Isunza, defendant used force as he jumped onto the bus through the open door and immediately placed a shank to the victim's neck.

At the very least, defendant's use of force occurred contemporaneously to his entry. While defendant claims that he "only threatened force, rather than actually used force," he

again incorrectly equates force with violence. (Def. Br. 32) While defendant did not use physical violence immediately, his actions vis-à-vis the bus driver certainly constituted force. And this force, coming as it did virtually contemporaneously with his entry, constituted the offense of vehicular invasion.

Defendant argues that he is guilty of vehicular invasion only if he uses violent physical force to enter a vehicle. His interpretation of the vehicular invasion statute is inconsistent with the manner in which similar statutes are analyzed, and results in absurdity. People v. Hanna, 207 Ill. 2d 486, 498 (2003) (courts must presume that legislature did not intend absurdity, inconvenience or injustice and must avoid a literal reading if such a reading occasions absurd results). If defendant is correct, an offender could jump into an open car door, slide in, punch the driver, steal her purse, yet be innocent of the crime of vehicular invasion. Defendant's theory is unsupported by both the text of the statute and its purpose, and contrary to settled law. See Reese, 2015 IL App (1st) 120654, ¶ 88 ("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"), citing 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 (1st Dist. 1990), abrogated on other grounds, People v. Williams, 149 Ill. 2d 467 (1992).

Defendant also claims that this view of vehicular invasion is absurd because, if correct, "a person could ride a bus for an hour before committing theft by force and would be guilty not only of the theft but of vehicular invasion as well." (Def. Br. 36) He warns

that "the only way to avoid this result would be for courts to set an arbitrary time limit after which the force is no longer connected to the entry." (Def. Br. 36) He is critical of this so-called "arbitrary" line and instead invites this Court to "adopt a clear line," that where "the entry itself is a forceful act, vehicular invasion occurs; where the force used inside a vehicle is subsequent to and distinct from the physical entry, there has been no vehicular invasion." (Def. Br. 26-27)

The problem with defendant's complaint is two fold. First, defendant's hour-long bus ride example would never be considered a situation where the force and the entry were concurrent. See People v. Runge, 346 Ill. App. 3d 500, 505 (3d Dist. 2004) (force and taking were separated by events and time and thus not "concurrent"); People v. Johnson, 314 Ill. App. 3d 444, 450 (1st Dist. 2000) (same, use of force too remote from the act of taking). The defining feature of both Runge and Johnson is that there was a significant interval between the taking, which was achieved peaceably, and the use of force. In that interval, the defendant in Runge executed a plan to commit an "unrelated, separate offense" (Runge, 346 Ill. App. 3d at 505); the defendant in Johnson left the presence of the victim, entered a house, and later returned before the taking (Johnson, 314 Ill. App. 3d at 450). Such an interval would exist in defendant's illustrative example of the peaceful bus rider who hours later commits a felony on the bus (Def. Br. 36); that defendant would not be guilty of vehicular invasion. No such interval exists in the present case, and is inconsistent with defendant's later argument that all of his acts were related and part of the same course of conduct. (Def. Br. 68-70)

Second, as seen in Runge and Johnson, among other cases, both the appellate court and this Court have recognized the significance of the temporal proximity between an act

and the force employed in construing the vehicular invasion statute, as well as other statutes containing a "by force" element. For example, both the robbery statute and the vehicular hijacking statute require a "taking" by force or threat of force, yet this "force" need not be contemporaneous with the taking. See, *e.g.*, People v. Aguilar, 286 Ill. App. 3d 493, 497-99 (1st Dist. 1997) (robbery); People v. Robinson, 206 Ill. App. 3d 1046, 1053 (1st Dist. 1991) (robbery); People v. Brown, 76 Ill. App. 2d 362 (1st Dist. 1966); 720 ILCS 5/18-1(a) (robbery statute states an individual commits robbery "when he or she *takes property *** by the use of force* or by threatening the imminent use of force"); People v. Merchant, 361 Ill. App. 3d 69, 73 (1st Dist. 2005), citing People v. Houston, 151 Ill. App. 3d 718, 721 (5th Dist. 1986) (holding that theft may constitute robbery where "perpetrator's departure is accomplished by the use of force"). These decisions are in accord with this Court's recognition that the only requirement is that there must be some concurrence between the use or threat of force and the taking of the victim's property. Lewis, 165 Ill. 2d at 339; People v. Williams, 118 Ill. 2d 407, 416 (1987); see also People v. Collins, 366 Ill. App. 3d 885, 897 (1st Dist. 2006) (sustaining conviction for attempted robbery where "there was no significant interval between the attempted taking and the use of force," even though use of force occurred after attempted taking). The same should be said of an entry by force.

In this regard, Brooks, 202 Ill. App. 3d 164, is especially instructive, and the appellate court below correctly looked to that decision. The victim in Brooks, a passenger on a bus, felt someone opening her purse, and upon checking her purse, she discovered that her wallet was missing. Id. at 168. She then turned around and saw her wallet in the hands of defendant, who was seated directly behind her. Id. When she demanded that he return it, the defendant pushed her shoulder and ran from the bus. Id. Although this use of force did

not occur until after defendant had taken the victim's wallet, Brooks held that it was sufficient to sustain defendant's conviction for robbery, explaining: "We believe this force, 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 under Illinois case law." Id. at 170.

Defendant nevertheless criticizes the appellate court's citation to Brooks and instead argues that the burglary statute is a better guide because burglary also requires an "entry." (Def. Br. 35) But he fails to account for the purpose behind the vehicular hijacking statute -- to protect unsuspecting individuals in cars from violence. People v. Anderson, 272 Ill. App. 3d 537, 540 (1st Dist. 1995) (proposing that purpose of statute was "preserve the integrity" of occupied vehicles and "to halt an increase in the number of 'smash and grab' crimes"). The vehicular invasion statute does not demand or place temporal limits on the manner in which the entry is made. Just as the robbery and vehicular hijacking statutes may encompass a "taking" with the force used later during commission of the offense, so too does the vehicular invasion statute allow for the force to be used *after* the entry. It is actually defendant's overly narrow and restricted reading that does harm to the whole point of the statute. As noted, if his interpretation is correct, then an offender reaching into an open window or door of a car, and seconds later grabbing a purse or item from an occupant, while punching or violently taking that item from the occupant, would not be a vehicular invasion because, as defendant would have it, the "entry" itself was not accomplished by force. This interpretation of the statute runs counter to its very purpose and is contrary to multiple cases involving the vehicular invasion statute where the "entry" did not necessarily involve "force," but force was used immediately thereafter inside the car. See, *e.g.*, People

v. Robinson, 383 Ill. App. 3d 1065, 1067 (1st Dist. 2008); People v. Handy, 278 Ill. App. 3d 829, 832 (4th Dist. 2996); People v. McPherson, 306 Ill. App. 3d 758, 760 (5th Dist. 1999); People v. Jones, 289 Ill. App. 3d 1, 3-4 (1st Dist. 1997).

In effect, defendant would have this Court create a precise factual exception to the statute to fit his particular circumstance, and this "exception" would place all of the above-cited cases outside the reach of the vehicular invasion statute, simply because the force used was not violent and did not accompany the entry, but was committed just after entry into the vehicle. (Def. Br. 36-37) This request is unsupported in law, contrary to the statute's purpose, and would defeat the plain meaning of the vehicular invasion statute.

III.
THE COURT'S DECISION THAT DEFENDANT REMAIN SHACKLED BY HIS FEET ONLY, WITH COVERINGS SO THAT THE VENIRE COULD NOT SEE THE SHACKLES, WAS NOT AN ABUSE OF DISCRETION AND CAUSED NO PREJUDICE TO DEFENDANT DURING *VOIR DIRE*.

Defendant next claims that the circuit court erred when it required defendant's feet to be shackled during *voir dire*. (Def. Br. 38) He criticizes the court for not exercising discretion (according to defendant, "completely deferring" to the DOC officers), and claims that he was "inhibited in the performance of his self-representation" and was prejudiced "in the eyes of the jury" (because one juror said he saw the "little belt on Mr. Reese's strap between his feet"). (Def. Br. 38, 43) The appellate court correctly rejected defendant's arguments. People v. Reese, 2015 IL App (1st) 120654, ¶¶ 101-09.

A defendant may be shackled when there is reason to believe that he may try to escape, that he may pose a threat to the safety of the people in the courtroom, or that it is necessary to maintain order during the trial. People v. Boose, 66 Ill. 2d 261, 266 (1977). In

determining whether to shackle a defendant, a trial court must "place its reasons for shackling a defendant on the record and provide defense counsel with an opportunity to offer reasons why the defendant should not be shackled." Id. See also People v. Urdiales, 225 Ill. 2d 354, 416 (2007); People v. Allen, 222 Ill. 2d 340, 348 (2006). A reviewing court examines whether the trial court abused its discretion when allowing a defendant to appear shackled before the jury. Allen, 222 Ill. 2d at 348. Shackling may be reviewed for harmless error. Deck v. Missouri, 544 U.S. 622, 635 (2005) ("State bears the burden of establishing beyond a reasonable doubt that the [shackling] error complained of did not contribute to the verdict obtained." (internal quotations omitted)).

The record in this case shows that, while the circuit court never provided its reasons for the shackling, defendant did not suffer any prejudice. First, despite the court's failure to provide its reasons, it can reasonably be inferred that defendant needed to be shackled in the courtroom, at least until the moment of trial, because he was charged with escape while in the custody of correctional officers and he had had an irrational outburst in court on an earlier occasion. (R.HHH3-5, III5-16) Furthermore, defendant suffered no ill effects from his foot shackles because, as the record discloses, he never took issue with the shackles during all of the pre-trial proceedings and expressly told the court that he needed only the handcuffs off to effectively operate in the courtroom. (R.KK4-5, LL3-5) It was only just before jury selection that defendant complained that he wanted the foot shackles off. (R.PPP3, PPP10-11) Furthermore, defendant himself drew one venireperson's attention to the shackles, which were hidden behind curtains on both counsel tables. (R.PP56-58) Only two members of the venire were questioned about the shackles because defendant opted not to question any other and neither suggested that they were adversely affected by what they

saw: one of these persons indicated that she was unaware of any restraints, and the other said that he assumed that shackling was standard courtroom security. (R.PPP56-61) In short, defendant was not prejudiced because these two venirepersons said that they were in no manner affected by the shackles; the shackles did not impede defendant's ability to question the venire at length; and the evidence was so overwhelming that any error was harmless beyond a reasonable doubt.

At an early pre-trial date, defendant told the court that he wanted to be in the courtroom without restraints because he was "uncomfortable." (R.Z5) The court advised defendant that, "at a future point in time when you have to have a pen and pencil in front of you or legal pad and you are going to be writing, obviously, you will be allowed to do that, and you'll be free of your restraints so you can take notes, when witnesses are testifying, things of that nature." (R.Z5-6) On a subsequent court date, after defendant had filed a motion to dismiss his indictment, he told the court that he wanted his handcuffs removed so he could effectively argue his motion: "I'm not going to be able to function in the restraints while I'm making an argument," because "I plan to also write or keep notes as I'm going along" and "I have to have separate paper." (R.KK4-5) Defendant did not request removal of his leg shackles however:

> "This is very uncomfortable. I mean if the chains - - well, you can leave the shackles on. They're not going to, you know, cause any distractions in my presentation but this will. These chains will. These handcuffs will. And I won't be able to function. *** These belly [chains] and these handcuffs. They are a distraction." (R.KK4-5)

When the court asked if defendant's handcuffs could be removed, a correctional officer responded, "If you order it, we can." The court then ordered "[h]andcuffs only." (R.KK4-5)

On the following court date, defendant again asked for removal of his handcuffs, but

not his shackles, so he could discuss discovery matters with the prosecutor: "I made it very clear these shackles do not have to come off. Just the chains that are stopping me from effectively working here." (R.LL3-5) Thereafter, the matter was continued multiple times. (R.NN6-9, OO5-7, PP3-4, QQ3-5, RR3, SS5, TT6, UU3, VV3, WW5-11, XX3, YY3) On one such pretrial date, defendant had an outburst in court about the manner in which he was being detained by the correctional officers:

> "Your Honor, I'm going to need a break. I'm going to need a break because I'm agitated right now. I don't like people holding on to my back. He's holding on my back. I usually don't want to say anything about that. He don't have to hold this chain like this, yanking on it. So, with your permission, you know, can he please just give me a few feet, just a few feet, I been coming in here on my best behavior for four years. Now, this is unnecessary. Please do something about this." (R.HHH3)

When the court did not immediately respond to defendant's complaint, defendant "warned" the judge and threatened to leave:

> "I'm going to excuse myself from the courtroom. I warned you, Judge. You think I'm trying to be a problem. I warned you. I can't work like this. *** Nothing is happening to you. If you had a chance to step into my shoes for a minute and see what I'm going through mentally, then maybe what you concluded would be different.
>
> This man is too close to me right now. No other officers get close to me. They respect me when I come in this courtroom, all right.
>
> Now, I mean, can you just please - - it's not hard. We'll get this taken care of. This guy is yanking at my chain. I don't like to feel like that." (R.HHH4)
>
> ***
>
> [to officer guarding him] "Can you please step back and give me a little room? Well, then I don't want to do this then. I'm not going to do this. I'm not going to take this then. If we got to go, then we'll never get anything done in this courtroom, because that's outrageous. I don't like this. It's messing with my head." (R.HHH4)

When the judge reminded defendant that "one person talks," defendant said, "I know we're talking. Like you said, we can talk if you tell this man to get off me." (R.HHH4-5) The judge then told defendant that he was going to tell the two officers to remove defendant from the courtroom, and defendant responded, "We can do that" and continued to tell the

correctional officers, "Stop grabbing my chain." (R.HHH5)

On the next court date, defendant apologized for his earlier behavior ("being loud and obnoxious," as defendant described it) and told the court that he had wanted to file "a motion" but was not in the right frame of mind to do so because "the same people who caused me to react that way are here with me today and have caused additional problems for me, problems that are so severe and so great that I can't even continue this case right now." (R.III3, III5-10) After defendant continued to complain about the van ride to court, and the court reminded defendant that it could not do anything about how defendant was transported, defendant began challenging the judge: "That's not charming, man. Is there something you don't understand?" (R.III12) "Listen, sir, you are not understanding." (R.III14) After defendant finished telling the judge that he was not going to file a motion because he was not in that "frame of mind," the court reiterated, "You don't have any motion to file." (R.II115) Defendant then challenged the judge:

> "THE DEFENDANT: How do you know Judge? You are assuming.
> THE COURT: I'm looking at your hands.
> THE DEFENDANT: It can be in here, Judge. You are just assuming. This is the kind of system we have.
> THE COURT: The thing is it makes no difference.
> THE DFENDANT: To you it don't, Judge. And that's the shame.
> THE COURT: No. It's your choice to file motions or not file motions." (R.III15)

Defendant then again complained about the "crap" he "had to take" and told the judge, "Don't try to make it seem like I am coming in here irrational." (R.III16) When the court told defendant, "I don't try to make anything seem like anything. The record speaks for itself," defendant countered, "I hope the record reflects, because I can't work under these conditions." (R.III16)

On the following court date, defendant informed the court that he was "much, much

better today," was "ready for trial," and wanted a jury trial. (R.JJJ3-5) After several continuances, the matter was finally ready for trial, and prior to jury selection, the court asked defendant if he needed legal pads and pens. Defendant answered that he was ready "to change into my clothes and get out of these shackles so I can prepare my paper work." (R.PPP3) At this point, the court and defendant discussed defendant's restraints, with the court explaining that defendant's hands would be free, but his feet would be shackled; however, the shackles would not be visible as the court intended to drape both counsel tables so that nothing below the tables could be seen:

> "THE COURT: Later on you will be in your other clothes. You will have your hands free, and we'll have drapery around both tables so the jurors will not be able to seek if you have leg shackles on.
>
> 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 ***. 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. I didn't have to [d]o that the first time. That's my point. You made the decision." (R.PPP4-5)

Shortly thereafter, the judged explained *voir dire* in detail to defendant (R.PPP6-8), and again defendant raised the shackling issue; the court said it would take it under consideration:

> "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. As a matter of fact, if I wanted to have you to do these clothes, they need paperwork on that. They need court orders for me to be in civilian clothes. That's how things work. And so to take these off, you're going to have to do an order for it. That's because that's how they work. And I will give you my word if I so much as step in the wrong directions, I will willingly put these back on. But I am here to do a thorough job, and I cannot work under these conditions.

THE COURT: I will take it under consideration and make a decision tomorrow.

THE DEFENDANT: Thank you, sir." (R.PPP10-11)

After the judge's introductory remarks to the venire (R.PPP15-33) jury selection began with the first panel of six venirepersons, three of whom defendant declined to accept. (R.PPP54) When the court sought clarification about whom defendant was referring to, defendant brought up his restraints:

"THE DEFENDANT: Here's the thing, sir. Our reason for having these drapes here, what was our reason for having these drapes? Now you see - -

THE COURT: We are not going to talk about this.

THE DEFENDANT: Not in front of them if you could one minute excuse them.

THE COURT: Is Ms. Fourkas excused?

THE DEFENDANT: She will be excused after we talk about what we need to talk about." (R.PPP54-55)

After the remaining members of the first venire panel were escorted from the courtroom, the discussion continued:

"THE DEFENDANT: [Ms.] Fourkas, [Mr.] McSorley, and [Ms.] Myles, they 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, then we might as well not have the drapes up. You see what I am saying. They were sitting right there on that side. They saw me.

THE COURT: That in and of itself doesn't - - which people?

***

THE DEFENDANT: Well, those two people. Actually it's just two people right now. We haven't gotten to the third person. The two people that were sitting on this

side was Fourkas and McSorley." (R.PPP55-56)

When Ms. Fourkas was brought back into the courtroom, defendant and the court questioned her on what she had seen. Ms. Fourkas said she did not know about the shackles until defendant himself mentioned them, but she had noticed the security in the courtroom:

"THE COURT: Ms. Fourkas, have you been able to see behind these curtains that drape these tables?

A. No. But I can make assumptions because of the way you guys are acting. A lot of assumptions can be drawn by what took place in the courtroom.

THE COURT: By the fact there were drapes there?

A. I thought they always were until he [defendant] announced there were drapes.

THE COURT: Is there anything about the facts that there are drapes there that would affect your ability to be fair?

A. No.

***

THE DEFENDANT: So you did not see [past] these drapes?

A. No

Q. Would it make any different to you if you knew I had shackles on?

A. I don't think considering the Judge announced in the beginning the Defendant was convicted of first degree murder.

THE DEFENDANT: Did you say that, Judge?

THE COURT: No. I said he was charged.

A. Charged. Gave me the assumption with the other pending charges that he had taken a weapon from a corrections officer. I kind of assumed you had been charged with first degree murder. Speaking right now I can not sit and talk about this.

THE DEFENDANT: It's fine. I just want to make sure you seeing these shackles doesn't have any bad, or should I say it doesn't cause you to conclude before its time in terms of my innocence or guilt.

A. I haven't seen them [the shackles]. I had not seen them. I still cannot see them.

THE COURT: So she was unaware until you told her about them, Mr. Reese.

THE DEFENDANT: True. But she was sitting on this side.

A. We couldn't see. I can't see [past] him.

THE DEFENDANT: Okay. I guess since you know we can just knock you off and we can keep them [the remaining panel members].

THE COURT: Are you excusing Ms. Fourkas.

THE DEFENDANT: Yes. She needs to go study anyway." (R.PPP56-58)

The court and defendant then questioned venireperson McSorley as to what he could see:

"[THE COURT]: I can't remember where you were sitting exactly where you were sitting. Could you see behind this drapery on these tables?

A. Yes. I could see behind there. When I was sitting back there sure.

Q. What did you see?
A. I saw a little belt on Mr. Reese's strap between his feet.
Q. Is there anything about that that would block your ability to be fair?
A. No.

***

THE DEFENDANT: Does this [shackles] mean anything of significance to you?
A. No. Not at all.
Q. Does it give you the impression that I cannot 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 COURT: Did you want me to question the other two people, too?
THE DEFENDANT: No.
THE COURT: All right. Bring out Aaron Perry and Danielle Quinn. Do you, are you accepting them or rejecting them?
THE DEFENDANT: I am not rejecting anyone at this moment. I mean if rejecting them means I am using up more of my [peremptory challenges]?
THE COURT: Yes. If you reject them you are using up more of your [peremptory challenges].
THE DEFENDANT: Then I'm not going to reject them.
THE COURT: Bring them all in." (R.PPP59-61)

During the questioning of this first panel, the court again asked about defendant's appearance: "Is there anything about Mr. Reese's appearance in court that would affect your ability to be fair in this case all of you? His appearance with this drapery in front of him. Is there anything about that that would block your ability to be fair the way he appears in court today." (R.PPP65-66) And prospective juror Quinn indicated that she did not notice defendant's appearance. (R.PPP66) Defendant then accepted the panel with Myles, Perry, Quinn, and McSorely. (R.PPP66) As *voir dire* continued, there was no further mention of defendant's shackles. (R.PPP61-213)

After the alternate jurors were chosen, defendant again asked the court to remove the shackles during trial, and the court agreed:

> "THE DEFENDANT: Would you please remember to consider the shackle situation for tomorrow. I say can you please remember to consider the shackles being removed tomorrow during opening argument.
> THE COURT: What does I.D.O.C. say about that?
> THE DEFENDANT: Well, here's the thing. I.D.O.C. --
> THE COURT: No, I don't want to hear from you. I want to here (*sic*) from I.D.O.C.
> THE SHERIFF: We keep them on unless you order them off.
> THE COURT: 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." (R.PPP217-18)

On the day of trial, the court ordered defendant's shackles removed. (R.QQQ3; C.114)

As the record reveals, the circuit court evidently knew it was within its power to order defendant's restraints removed (in fact, the guards also said as much to the court on a number of occasions). And based on the court's comments and extensive discussion with defendant, it can be reasonably inferred that the court believed defendant should remain shackled, given his behavior in court and the nature of the charged offense. Nevertheless, the court did not expressly provide its reasons; this was error. See Reese, 2015 IL App (1st) 120654, ¶ 103 (judge failed to "state the reasons for shackling on the record before requiring him to remain shackled"); Allen, 222 Ill. 2d at 348-49 (trial court failed to make record under Boose).

Nevertheless, the appellate court was also correct that such an error did not prejudice defendant. Reese, 2015 IL App (1st) 120654, ¶¶ 106-08. First, because defendant was not shackled during trial, the first two Boose concerns are not present. Boose, 66 Ill. 2d at 265 (shackling "tends to prejudice the jury against the accused"; "restricts his ability to assist

his counsel during trial"; and "offends the dignity of the judicial process"). Defendant, however, insists that jury selection, as a critical stage, is just as important as trial. (Def. Br. 41) Although defendant was shackled during *voir dire*, he was not prevented from extensively questioning the venire. (R.PPP65-218) Moreover, defendant accepted his shackles, telling the court on multiple, prior court dates that he needed only his hands free to write and take notes. (R.Z5, KK4-5, LL3-5) And during *voir dire* the court allowed defendant to have his hands free band hid the shackles with draping on both counsel tables. (R.PPP3-5) Defendant's assertion that he was "inhibited in his ability to" represent himself during *voir dire* is not supported by the record. (Def. Br. 44)

Defendant insists that concealment of the shackles "does not diminish the error," and thus it does not matter if any jurors actually saw the restraints. (Def. Br. 47) But defendant first brought the restraints to the attention of the first panel. During questioning of two members of that panel, it became apparent that only one person saw the restraints, another said she did not, and neither said they were impacted by the restraints; no one else on that, or any other, panel was ever questioned because defendant refused. (R.PPP56-61) When given the chance to strike this venireperson or to ask other venire member about the drapes or his appearance, defendant declined. (R.PPP61) Thereafter *voir dire* continued, no other venirepersons saw defendant's shackles, and prior to trial, the shackles were removed. (R.PPP65-66, PPP68-218, QQQ3) Defendant did not suffer prejudice here. See United States v. Van Chase, 137 F.3d 579, 583 (8th Cir. 1998) (juror's brief view of defendant in restraints on an elevator insufficient to establish prejudice to warrant new trial); United States v. Mejia, 559 F.3d 1113, 1117-18 (9th Cir. 2009) (no prejudice where venire members could not see shackles during *voir dire* and "the district court properly considered

both the recommendations of the U.S. Marshals as well as [defendant's] disruptive behavior in the courtroom to conclude the use of physical restraints was justified").

Defendant also speculates that other jurors possibly saw or heard the shackles. (Def. Br. 47) There is no basis in the record to support this speculation, particularly since defendant himself chose not to continue to question the first panel, or any other. (R.PPP61) Defendant also cites People v. Bennett, 281 Ill. App. 3d 814, 825-26 (1st Dist. 1996), in support of his claim that it is not relevant whether the jurors actually saw the shackles. (Def. Br. 44-45) He misrepresents the holding in Bennett, in which the court found that there was *no reason* for the shackling in the first place. Bennett, 281 Ill. App. 3d at 825, 826 ("Like Stewart, and other cases in which courts have held that shackling a defendant during trial was proper, there has been evidence that the defendant was an escape risk or was likely to cause a disturbance in the courtroom. By contrast, there was no indication that the defendant in this case was an escape or safety risk." (Internal citations omitted.)). Here, defendant was a flight risk because he had already escaped once from jail custody and had been occasionally disruptive in court.

Defendant also incorrectly insists that the evidence in this case was not overwhelming and the error was particularly prejudicial given that he was charged with escape. (Def. Br. 46) However, since there is no indication that any other juror saw the restraints, there was no prejudice, let alone "heightened" prejudice, in this case. And defendant was unrestrained for the whole of the remainder of trial. Moreover, the evidence in this case was overwhelming, given that defendant conceded that he escaped from custody and essentially admitted all of his actions. (R.SSS135-36, SSS162-63, SSS165-66, TTT39)

Also contrary to defendant's assertions, the jury's notes and the length of time it

spent deliberating is irrelevant for measuring whether the evidence was close. (Def. Br. 46) The jury's notes during deliberation merely sought clarification on the different terms in the instructions. See People v. Wilmington, 2013 IL 112938, ¶ 35 (concluding the evidence was not closely balanced where the jury sent notes during deliberation, but record contained no indication "that the jury at any time had reached an impasse or that the jurors themselves considered this a close case"). And the jury's question and ultimate deadlock on the kidnapping charge was far more likely due to the court's answer to its question concerning whether the element "secretly" applied only to the confinement or also to defendant's intent, and not based on any closeness of the evidence. (R.TTT123; C161) The court incorrectly told the jury that the term "secretly" applies to both the confinement and the suspect's intent to confine (R.TTT124-30; C.163); since defendant's intent was not "secret," in that he overtly took the bus from, and subsequently confined, the driver, the court's answer worked in his favor. It cannot be presumed, therefore, that the jury's deadlock was due to the "closeness" of the evidence. And the jury's other questions showed, as the judge expressly noted, that the jurors were paying very close attention to the evidence and instructions. (R.TTT114-118, TTT130, WWW27; C. 165)

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 court answered the jury's first question at 2:15 p.m. and responded to the last one at 7:12 p.m. (R.TTT110-33; C.160-66) The jury returned verdicts that same evening. (T.TTT133-35) Given the numerous charges and lengthy evidence, nothing about the length of the juror's deliberations supports defendant's claim that the evidence was close.

Moreover, defendant's necessity defense -- that he did not escape to avoid the

sentence he would serve on the murder for which he had just been found guilty, but instead because of a beating he had sustained in jail over a year earlier -- was not convincing. (Def. Br. 47) The jurors reasonably rejected this defense, which was highly suspect given the timing of his escape so soon after being found guilty of a murder subject to natural life imprisonment.

Finally, defendant criticizes the appellate court for failing to explain why the evidence of vehicular invasion was overwhelming, and relatedly argues that the evidence of vehicular hijacking was "close," because "the jury would still need to weigh whether [the bus driver] ever relinquished control of the bus." (Def. Br. 46) His arguments ignore the ample and unrebutted evidence of both offenses that even defendant did not contest, and also ignore the actual defense presented. At trial, the defense never suggested that there was no entry by force or that there was no relinquishment of control of the bus. Rather, defendant unbelievably claimed that he merely walked on the bus, asked nicely if the driver would please help him get away, and the bus driver agreed to help him escape, but reconsidered when police arrived and then attacked defendant first. (R.SSS135-36, SSS142)

As a final matter, this is not a case where the shackling was unreasonable or unnecessary. See People v. Buss, 187 Ill. 2d 144 (1999). Defendant was a flight risk, having already escaped from custody, a fact he readily admitted. He was charged with, and also admitted, injuring multiple individuals during that escape, although he claimed that those injuries were either caused by the victims themselves or were accidental. Moreover, the circuit court had observed defendant's irrational outbursts and his frustration on a number of court dates. Under these circumstances, defendant posed an escape risk and was a threat to the safety of courtroom occupants. While the judge should have expressly stated

these reasons, it can be inferred from this record that the court, aware of the charges and the heightened need for security, chose to keep defendant at least shackled until the actual trial. The trial court accommodated defendant's need to take notes, allowing defendant's handcuffs to be removed, and took precautionary measures to ensure that the venire did not view defendant's leg shackles by draping counsel table. *Cf.* Allen, 222 Ill. 2d at 358 (rejecting argument that pre-seating the defendant would cause jury to attach undue significance to that fact, since most jurors were unfamiliar with courtroom procedure and would not discern a difference much less impute a negative connotation to it).

Therefore, the court's actions addressed the concerns associated with shackling (prejudice to the defendant, inability to assist in his defense, and the dignity of the proceedings) and alleviated any error in its failure to make a record. There is no indication from the record that defendant was not able to represent himself, or that more than only one juror saw or knew that he was shackled. And the trial court's precautionary measures, the draping of counsel table, assured that the shackling of defendant's legs did not diminish the dignity of the proceedings. Accordingly, defendant suffered no real prejudice.

IV.
DETAILS ABOUT DEFENDANT'S PRIOR MURDER CONVICTION WERE RELEVANT TO ESTABLISH MOTIVE FOR HIS ESCAPE AND TO REBUT DEFENDANT'S AFFIRMATIVE DEFENSE THAT HE HAD ESCAPED *ONLY* BECAUSE OF AN ALLEGED BEATING BY JAIL GUARDS OVER A YEAR BEFORE HIS ESCAPE.

Defendant next complains that the State presented "too much detail" about his unrelated murder conviction and sentence in the form of a certified copy of conviction containing a description of the crime. He also complains that the State asked defendant "improper" questions and presented improper argument regarding how that murder was

committed with a firearm. (Def. Br. 51-55, 57-58) He then insists that the "numerous errors" are reviewable under both prongs of plain error. (Def. Br. 60-62) None of his arguments has merit.

First, defendant forfeited this issue because he failed to contemporaneously object to the arguments and to the admission of the certified copy of conviction. See People v. Wheeler, 226 Ill. 2d 92, 122 (2007). Moreover, defendant himself brought up the prior murder and occasioned any and all mention of that conviction and potential life sentence it carried. He thus cannot complain about admission of these details. People v. Villarreal, 198 Ill. 2d 209, 227-28 (2001) (party cannot complain of error if he acquiesced in, or caused, it). As the record reflects, the court initially only allowed evidence that defendant was in custody for a "felony" at the time of his escape; the State abided by this ruling, presenting testimony that, at the time of his escape, defendant was an inmate in the Cook County Jail "on a felony offense." (R.PPP217, SSS42) But the court also warned defendant that his "necessity" defense could open the door to the admission of more detail, in that the conviction was for murder: "should 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. So that's the ruling. They are not going to put it in their case and chief. But if you testify, they get to put it in." (R.PPP217)

After this clear warning, defendant himself presented highly detailed evidence about that murder. He first told the jury that he was in custody after being found guilty of that murder and, then, repeatedly insisted to the jury that he was "innocent" of that crime, and

only escaped to get away from the events occurring in jail, including a beating from jail guards over a year before his escape.[2] (R.PPP217, SSS123-27, SSS133-34, SSS138-43) Defendant also testified that he only escaped because, "I felt my life was in danger and I felt that if I can get out, I could alert the authority that could potentially so something about it, and help the people that was falling victim to mistreatment in the Cook County Jail for years." (R.SSS133) He suggested that he was only in jail, charged with that murder, because he was "extremely young" and had been "manipulated by officers and through that manipulation [they] put me in a position to be further taken down the line of going to prison." (R.SSS123) He further insinuated that he had been railroaded by police and wrongfully convicted of the murder when he told the jurors that he had learned not "to trust a person because they wear a badge" and had learned not "to speak to anyone without an attorney present." (R.SSS123) His closing argument to the jury mirrored these claims, maintaining that he was innocent of the murder and only escaped because he, and others, were in danger in the jail. (R.TTT39-45, TTT51-52, TTT59-60)

Thus, it was proper for the State to counter that evidence and prove defendant's *real* motive -- that he escaped because he had just been found guilty of murder with a firearm and was facing a life term for that murder. See, *e.g.*, People v. Unger, 66 Ill. 2d 333 (1977) (reasons for escape relevant). To that end, during cross-examination, the prosecutor asked defendant about details of that prior murder; defendant admitted that the jury had found that he committed the murder by personally discharging a firearm. (R.SSS150-51) When the

[2] As early as opening statement, defendant argued that, at the "young" age of 17, he was in Cook County Jail, where, although he was innocent, he "feared for his life after being *** savagely beaten by corrections officers in the Cook County jail [which] led to the escape." (R.QQQ19, QQQ20) During his trial testimony, he even told the jury about another offense, claiming that he was charged with a battery offense when he was 12 years old, but insisting that he was innocent of that crime too. (R.SSS120-22)

prosecutor asked defendant if that meant that he was facing a "potential sentence of 45 years to the rest of natural life in prison," defendant objected, but his objection was overruled. (R.SSS151) After stating that he "didn't do the crime" (R.SSS151), defendant admitted that he was facing a lengthy sentence after being found guilty of murder: "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) The prosecutor then explored defendant's motivation for his escape in greater detail, establishing that defendant understood he was facing a significant sentence on the murder and would have to serve the entire sentence. (R.SSS152-57) Nevertheless, defendant continued to insist that he did not escape three days after being found guilty of the murder in order to avoid a lengthy murder sentence ("Going to jail for life, that didn't mean anything to me") but instead escaped only to prevent further abuse ("It was due to the beating and my fear of being beaten worse"). (R.SSS152-57) During closing argument the prosecutor likewise responded to defendant's story about how he wanted to escape the brutality in the jail so he could report it and save others:

> "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 this 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 a least 45 years. It's about establishing his freedom." (R.TTT178)

As the record reflects, defendant himself was responsible for the admission of the information about his murder conviction and sentence, and therefore cannot complain about the prosecutor's references to it. See People v. Harvey, 211 Ill. 2d 368, 385 (2004). A view

with which the trial judge agreed, when it noted, in denying defendant's motion for a new trial, that it was defendant himself who "triggered" the admission of the evidence because he brought up the murder and chose to testify about his alleged alternative motive for the escape. (R.VVV8-12)

Nonetheless, defendant now criticizes the State, first arguing that the content of his certified copy of conviction was reviewed by the jury and contained "too many details." (Def. Br. 51-55) But defendant wrongly assumes the jury was given the certified copy of conviction and overstates the record when he claims that "the judge stated that the certified copy of conviction would be provided to the jury." (Def. Br. 53) The judge never made any express statement. At most, the record is ambiguous about what was actually sent back to the jury. (R.TTT114)

After the State presented the certified statement of conviction and disposition for first degree murder, the court told the jury, "I'll give you a limiting instruction at the end of the argument with respect to that."[3] (R.TTT14) Later, after the jury began its deliberations, the parties discussed what exhibits would be given to the jury. The prosecutor told the court that all of the State's exhibits would be sent back with the jury during deliberations, "except for the Grand Jury transcript and the certified copy." (R.TTT114) The court then said, "Right. The Grand Jury transcript doesn't go back, everything else does." (R.TTT114)

While defendant presumes that the certified copy of conviction was given to the jury to review and scrutinize, the fact remains that the court said "right," after the prosecutor said the certified copy of conviction was not being submitted by the prosecution to be given to

[3] That limiting instruction told the jury that "[e]vidence of a defendant's previous conviction of an offense may be considered by you only as it may affect his believability as a witness and must not be considered by you as evidence of his guilt of the offense with which he's charged." (R.TTT92)

the jury. (R.TTT114) Even though the court also said "everything" goes back to the jury "except" the grand jury transcript, this one statement is not equivalent to an express court order to provide the certified copy of conviction.

Yet defendant insists that the court affirmatively ordered that the entire certified copy of conviction was to be provided to the jury. (Def. Br. 52) His interpretation of the record is not sound. As correctly noted by appellate court, "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." People v. Reese, 2015 IL App (1st) 120654, ¶ 116. Defendant, however, criticizes the appellate court for making him provide affirmative proof that the certified copy was sent back, and insists instead that the State should have to shoulder the burden to rebut the error *via* Supreme Court Rule 329. (Def. Br. 52) But defendant misconstrues the appellate court's finding. The appellate court properly construed the record as ambiguous about what actually happened. See Reese, 2015 IL App (1st) 120654, ¶ 116 ("[a]bsent 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"). A party appealing the trial court's decision bears the burden of showing that an actual error occurred; speculation alone will not suffice. See People v. Gosier, 145 Ill. 2d 127, 161 (1991). Likewise, it is presumed that the trial court knows the law and that it acts in accordance with the law unless the record affirmatively rebuts that presumption. See, *e.g.*, People v. Howery, 178 Ill. 2d 1, 32 (1997) ("trial court is presumed to know the law and apply it properly" absent "strong affirmative evidence to the contrary"). Here, because it is unclear whether the certified copy of conviction actually was provided to the jury, there is no reason to speculate that the court committed error.

In any event, even if the jury was given that certified copy of conviction, defendant's assumption that the jury was prejudiced is unfounded. (Def. Br. 51-54; Def. Br. Appendix) The certified copy of conviction is simply a printout of the court dates, with acronymic notations regarding the proceedings occurring on those dates. (Peo. Exh. 52) There is no indication that the jury would understand the legal significance of, or be prejudiced by, that document, even if it reviewed it.

Moreover, in advancing these arguments, defendant ignores the real relevance of his prior murder conviction and life sentence, and suggests that its only legitimate purpose was to impeach his credibility per People v. Montgomery, 47 Ill. 2d 510 (1971). (Def. Br. 53-55) The State moved to admit that prior conviction and sentence for motive, in addition to Montgomery impeachment. (C.101-12; R.TTT92) In a prosecution for escape, motive is a significant inquiry, particularly if the defendant's motive, as in this case, is to avoid the imposition of a lengthy prison term. People v. Scheck, 356 Ill. 56 (1934) (State entitled to prove indictments pending against defendant when he attempted to escape from courtroom because charges against him established motive for attempted escape during which defendant killed police officer); People v. Salazar, 126 Ill. 2d 424, 455-56 (1988) (no error in admission of arrest warrant and complaint, charging defendant with aggravated battery, into evidence at trial because they established motive for escape).

Accordingly, the prosecutor properly questioned defendant about that murder conviction, including the fact that defendant had been found guilty of using a firearm, thus exposing him to a potential life term, which in turn provided even greater incentive for his escape. (R.SSS150-52) In a related argument, defendant complains that even if the life sentence was relevant, the fact that he used a firearm was not. (Def. Br. 58) But his

attempt to parse error from this evidence should be rejected. The evidence of defendant's prior conviction and sentence -- murder with a firearm carrying a possible life term -- was relevant to rebut his alleged motive for his escape.

Defendant also argues that he never admitted that he had been found guilty of using a firearm in commission of the murder. (Def. Br. 57-58) This is contrary to the record:

> Q. Okay. And not only did the jury find you guilty of first degree murder, they made an additional finding that when you committed that murder, that you did so by personally discharging a firearm that proximally (sic) cause your victim to die, right?
>
> A. Oh, yeah. And when they did that, when they did that, sir." (R.SSS150-51)

Although defendant moments later appeared to deny this (saying "Huh," "Not that I know of," and "I thought it was something different than that"), when first asked about the jury's finding of the use of a firearm he agreed that it found he had used one. (R.SSS150-51)

Defendant also speculates that the prosecutor's use of the plural, "murders," and "among other things," suggested that defendant had killed more than one person and committed more than one crime. (Def. Br. 56-57) But the record, viewed in its entirety, shows no such danger -- throughout the proceedings, it was evident that there was one murder, one "victim," and one life sentence. (R.SSS122, SSS128, SSS138, SSS150, SSS151-52)

The prosecutor's cross-examination and closing argument was proper. It pointed out that, three days before his escape, defendant had been found guilty of murder with a firearm, thus exposing him to a potential life term. Here, the appellate court was correct to reject all of defendant's claims of error. Reese, 2015 IL App (1st) 120654, ¶¶ 116-18.

Moreover, even if error, the evidence in this case was not closely balanced. See

Issue III, *supra* pp. 35-37. The evidence overwhelmingly proved the charged offenses. All of defendant's cited cases, People v. Davidson, 235 Ill. App. 3d 605, 613 (1st Dist. 1992), People v. Dudley, 217 Ill. App. 3d 230, 232-34 (5th Dist. 1991), People v. Johnson, 208 Ill. 2d 53, 84-85 (2004), are distinguishable, as all involve significant errors in closely balanced cases. (Def. Br. 60-62) Defendant was provided ample opportunity to present his necessity defense. He took advantage of that opportunity and told the jury repeatedly that he escaped *only* because he had been beaten by jail guards a year earlier, a highly suspect story given the lengthy delay and the timing of his escape so soon after being found guilty of a life-eligible murder.

V.
THE JUDGE SUBSTANTIALLY COMPLIED WITH RULE 401(a) WHERE THE ADMONITIONS CORRECTLY ADVISED DEFENDANT OF THE LAW AND THE CONSEQUENCES OF WAIVING COUNSEL.

Defendant represented himself at trial; on appeal, he contends that he was not properly admonished pursuant to Supreme Court Rule 401(a), regarding his waiver of counsel, because the court "failed to admonish him that his sentence for the current offense would be imposed consecutive to his prior murder sentence." (Def. Br. 63, 64), citing 730 ILCS 5/5-8-4(i) (2007) ("*** if a person detained in a county jail facility or county detention facility following conviction of a felony commits a separate felony while in detention, then any sentence following conviction of the separate felony shall be consecutive to that of the original sentence for which the defendant was *** detained."). Defendant forfeited this issue because he failed to include this claim in his motion for a new trial. (C.206-07) He is also not entitled to plain error relief because there was no error, plain or otherwise, in the admonishments provided. Acknowledging that he never objected or raised this issue in his

post-trial motion, defendant nonetheless insists that "because his right to counsel is so fundamental," a violation of Rule 401(a) "will result in reversal as plain error without any further showing of prejudice." (Def. Br. 63) Defendant's arguments fail for several reasons.

First, the circuit court's admonishments were proper under Rule 401(a). Defendant was correctly advised of the nature of the charges, the range of sentence he faced, and of his right to counsel. Sup. Ct. R. 401(a). The record shows that, after defendant expressed his dissatisfaction with the public defender's office and told the court that he wanted to proceed *pro se* and was "making this decision knowingly and intelligently," the trial judge explained in great detail the nature of the charges, the extent of each of the penalties that he faced, and ensured that defendant understood his rights.[4] (R.Supp.5-6, 7-18) The court told defendant that he was facing multiple Class X charges, carrying terms of 6 to 30 years, with the possibility of extended and consecutive sentencing adding up to 160 years on just two of the charges alone. (R.Supp.10) The court also detailed the exact sentencing ranges on the other counts, including extended and consecutive terms. (R.Supp.10-11) The court, along with the prosecutor and public defender, calculated the sentencing range, which the court described as "massive time." (R.Supp.10-12) When asked if he "understood the penalties and sentencing ranges," defendant answered, "Perfectly, Your Honor, perfectly." (R.Supp.10, 18) Defendant also knew that he had been sentenced to a life term on the unrelated murder, on July 11, 2007. Moreover, the trial court went beyond the requirements of Rule 401(a) and specifically warned defendant about the dangers of representing himself. (R.Supp.17-18)

[4] By the time of his waiver, on October 7, 2008, defendant had had multiple other cases pending against him, including the unrelated murder for which he was found guilty and sentenced to life. (R. B3, C3, E3, H3-5) Although he did not proceed *pro se* in that murder case, he did on another, unrelated aggravated battery case. (R.H3-5)

As the record reveals, defendant was fully aware of the consequences of waiving counsel. His attempt to claim error now, because he did not know of the possibility that he might have to serve his sentence in this case *consecutive* to a life sentence, makes little sense, particularly because nobody could ever realistically serve such a sentence. Whether defendant knew of the consecutive nature of the potential sentence cannot have adversely affected his waiver. As the People recently argued before this Court in People v. Eugene Wright, No. 119561, strict compliance with Rule 401(a) is not required for an effective waiver of the right to counsel.[5] "[S]ubstantial compliance will be sufficient to effectuate a valid waiver if the record indicates that the waiver was made knowingly and voluntarily, and the admonishment the defendant received did not prejudice his rights." People v. Haynes, 174 Ill. 2d 204, 236 (1996). Ultimately, the question is not whether the trial court perfectly complied with the rule; the question is whether an error misled defendant or affected his waiver of counsel such that it was not knowing and voluntary. Accordingly, where "a review of the entire record indicates that defendant's waiver of his right to counsel was made knowingly and voluntarily, and the sole admonishment which he did not receive in no sense prejudiced defendant's rights, substantial compliance with Rule 401(a) is sufficient to effectuate a valid waiver of counsel." People v. Johnson, 119 Ill. 2d 119, 132 (1987). See also People v. Kidd, 178 Ill. 2d 92, 113 (1997) (substantial compliance with Rule 401(a) sufficient to effectuate valid waiver of counsel).

Although defendant claims that he was unaware of the "maximum" penalty (simply because he was not told his sentence in this case could run consecutive to his life term), he

[5] The People adopt the arguments made in that case and maintain that substantial compliance involves consideration of not just whether there was full or verbatim compliance with the rule, but whether the defendant's knowing waiver was adversely impacted by errors made by the circuit court in admonishing the defendant.

cannot reasonably maintain that he was unaware of the "massive time" he was facing in this case. (Def. Br. 67) Because the admonishments given clearly advised defendant of the maximum penalty *in this case*, defendant's claim can only rest on the trial court's failure to admonish him about *how* he would serve his sentence in this case in relation to a life-term sentence in another, unrelated matter. But defendant fails to cite any authority for his argument that compliance with Rule 401(a) must include discussion of the potential for consecutive sentences in all other cases. Indeed, the rule speaks only of the "penalty" faced in the case for which defendant is waiving counsel: "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." Ill. S. Ct. R. 401(a)(2). Defendant's own cited cases prove as much. People v. Koch, 232 Ill. App. 3d 923 (4th Dist. 1992) (no mention of fact that defendant was facing extended sentence *on this case* due to prior conviction). In compliance with the Rule, defendant was told the actual penalty he faced *in this case*. No other information was required. See, *e.g.*, People v. Harpole, 135 Ill. App. 3d 79 (5th Dist. 1985) (rejecting argument that 401(b) must apply to a fine-only prosecution, simply because of possible serious *collateral* consequences).

Even if the court should have told defendant about the consecutive nature of the sentence in this case, this one omission cannot have misled or prejudiced defendant, such that the court's admonishments adversely affected his waiver.[6] Defendant was aware that he

[6] At the time of the admonishments in this case (October 7, 2008), defendant had been sentenced to a life term in the murder case (on June 11, 2007). At this time, there could have been no legal requirement that the judge admonish defendant about the possibility of his sentence running consecutive to the unrelated life term, because the prevailing law was that no sentence could run consecutive to life. See People v. Palmer, 218 Ill. 2d 148, 164-65 (2006) (consecutive natural-life sentences were contrary to "laws of nature" because it was impossible to serve another life sentence consecutive to, or after, serving a

faced a substantial amount of prison time in this case alone and was already serving another life term. Because it is impossible for defendant to serve two life terms, or to serve any sentence consecutive to a life term, the failure to advise defendant of a sentence he could never actually serve did not prejudice him. Thus, there was no error. Haynes, 174 Ill. 2d at 236 (no prejudice where court did not provide complete admonishments regarding terms faced on lesser charges, where court told defendant he was facing a maximum death sentence). See also People v. Reese, 2015 IL App (1st) 120654, ¶¶ 121-24 (finding court below substantially complied with rule).

In reality, defendant's argument advocates for strict compliance with the Rule despite the absence of any prejudice to the defendant. This position is not supported by any decision from this Court, which has never held that perfect, or even strict, compliance in reciting Rule 401 admonishments is necessary; only "substantial compliance" is required. Hayes, 174 Ill. 2d at 236, 243. In other words, where a faulty admonishment does not mislead a defendant into waiving his rights, it does not render his waiver unknowing or involuntary. Ultimately, the question is not whether the trial court perfectly complied with the rule; the question is whether an error misled defendant or affected his waiver of counsel such that it was not knowing and voluntary. See Haynes, 174 Ill. 2d at 241 (the purpose of Rule 401(a) is to ensure that a waiver of counsel is knowingly and intelligently made).

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natural life sentence). See also People v. Ramey, 393 Ill. App. 3d 661 (1st Dist. 2009) ("the reasoning of Palmer renders a term of years consecutive to a life sentence void"). Two years later, this Court held that another sentence could run consecutive to a natural-life sentence. People v. Petrenko, 237 Ill. 2d 490, 506-07 (2010) (overruling portion of Palmer because "[t]he legislature has determined that the imposition of consecutive natural-life sentences serves a legitimate public policy goal, and even if its effect is purely symbolic, it is within the purview of the legislature to make that determination").

When applied to the facts of this case, the record does not support the conclusion that the alleged defect prejudiced defendant, *i.e.*, misled him to waive his right to counsel.

Aware that he can show no prejudice, defendant must claim, contrary to this Court's jurisprudence, that a prejudice inquiry is inappropriate because an error in admonishment automatically yields an unknowing and unintelligent waiver. (Def. Br. 63-65) In support, he cites People v. Langley, 226 Ill. App. 3d 742, 750 (4th Dist. 1992) and the dissent in People v. Maxey, 2016 IL App (1st) 130698, ¶ 198. (Def. Br. 65-67) But neither involves a similar factual scenario, and the analysis offered by defendant is unsupported by this Court's jurisprudence. Accordingly, defendant's claim should be rejected.

VI.
DEFENDANT'S CONVICTION FOR VEHICULAR INVASION IS A LESSER INCLUDED OFFENSE OF AGGRAVATED VEHICULAR HIJACKING UNDER ONE ACT/ONE CRIME PRINCIPLES.

Defendant alternatively argues that his vehicular invasion conviction should merge into his aggravated vehicular hijacking conviction under one-act, one-crime principles because "it is premised on the same acts as aggravated vehicular hijacking." (Def. Br. 69-70) He forfeited this complaint, having failed to object or include this issue in his motion to reconsider sentence; however, because the vehicular invasion and aggravated vehicular hijacking charges were based on the same act of entering the bus and threatening and attacking the driver, one-act, one-crime principles apply. (C.42, 46, 226-27)

Multiple convictions are improper if based on precisely the same physical act, or, if the conduct involved multiple and separate acts, if any of the offenses are lesser-included offenses. People v. King, 66 Ill. 2d 551, 566 (1977); People v. Rodriguez, 169 Ill. 2d 183, 186 (1996). Vehicular invasion is not a lesser included offense of aggravated vehicular

hijacking under the abstract elements test. See People v. Miller, 238 Ill. 2d 161, 175-76 (2010). Compare 720 ILCS 5/18-3, 18-4 (2006) with 720 ILCS 5/12-11.1 (2006). However, the same charged conduct comprised both offenses, and defendant's conduct was not apportioned into two separate acts/offenses, either in the indictment or in arguments at trial. (C.42, 46) The operative conduct charged in both offenses was defendant's act of entering the bus and attacking the bus driver. Since this act or series of acts was the basis for both charges, King applies. See People v. Isunza, 396 Ill. App. 3d 127, 133-34 (2d Dist. 2009). Accordingly, in the event that the aggravated vehicular hijacking conviction survives, the vehicular invasion conviction should be vacated as based on the same conduct underlying the aggravated vehicular hijacking charge.

VII.
IMPOSITION OF EXTENDED TERMS ON ALL BUT THE HIGHEST CLASS OFFENSES WAS ERROR BECAUSE THE TRIAL COURT FOUND THAT THE CRIMES WERE NOT A SERIES OF UNRELATED EVENTS BUT INSTEAD WERE COMMITTED FOR THE PURPOSE OF ESCAPE.

Defendant finally claims that the court improperly sentenced him to extended terms on three of his four offenses because his entire crime spree comprised a "single course of conduct" and therefore he was eligible to receive an extended term on only the greatest class of felony. (Def. Br. 68-70) The People conceded this claim below because the circuit court rejected the State's argument (for purposes of consecutive sentencing) that the several crimes had separate motivations, and instead accepted the defense argument that the crimes were "one transaction" with the same objective. (R.WWW22-24, 56-57) See People v. Reese, 2015 IL App (1st) 120654, ¶¶ 126-28; see also People v. Coleman, 166 Ill. 2d 247, 253-55 (1995); People v. Keene, 296 Ill. App. 3d 183, 186-87

(4th Dist. 1998); People v. Fieburg, 108 Ill. App. 3d 665, 671-72 (1st Dist. 1982); 730 ILCS 5/5-8-2(a) (2006). Moreover, the charged offense of vehicular invasion also included felony escape as the predicate of that offense, and thus the latter two offenses were part of the same objective—the escape. See People v. Willis, 204 Ill. App. 3d 590, 595 (4th Dist. 1990) (defendant's acts of aggravated battery against correctional officers and attempted escape from jail not separate acts accompanied by separate motivations as both involved overriding purpose to escape; information charging attempt (escape) also alleged that battery upon correctional officers was substantial step toward commission of escape).

In light of the indictment and the court's comments, defendant is correct that his series of crimes was viewed as sharing the same motivation: to escape from custody. The proper remedy would be for this Court to affirm the extended term sentences on the most serious felony charges (the Class X, aggravated vehicular hijacking charge), and reduce the remaining sentences on the lesser class offenses to the highest non-extended term.[7] See People v. Ware, 2014 IL App (1st) 120485, ¶ 32 ("[w]here, as here, a trial court improperly imposes an extended term, but 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").

[7] If this Court accepts defendant's argument that he did not commit an aggravated vehicular hijacking (see Issue I), then the highest Class felonies are Class 1 (vehicular invasion and attempt armed robbery) and either or both can thus carry an extended term. See People v. Jordan, 103 Ill. 2d 192, 207 (1984) (if multiple convictions are all the same Class, then all can carry extended terms).

CONCLUSION

The People of the State of Illinois respectfully request that this Honorable Court reverse, in part, the Appellate Court's judgment concerning its interpretation of the term "takes" in the vehicular hijacking statute, and affirm in all other respects.

Respectfully Submitted,

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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 54 pages. This Court granted the People's motion to file a brief in excess of the 50-page limit.

By: 

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