2026 IL App (1st) 241837-U
No. 1-24-1837

SIXTH DIVISION
October 9, 2026

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County, Illinois.
Plaintiff-Appellee,	)	
	)	
v.	)	No. 17 CR 12395 (03)
	)	
DANTE JEFFRIES,	)	
	)	The Honorable
Defendant-Appellant.	)	Neera Walsh,
	)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Justices Hyman and Evans concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court judgment is affirmed where (1) the evidence was sufficient regarding defendant's identity as one of the perpetrators of the offenses, (2) the circuit court made no reversible evidentiary ruling, and (3) cumulative errors did not deprive defendant of his right to a fair trial. We find no *Apprendi* violation with respect to the court's imposition of consecutive sentences but reduce defendant's improper aggregate sentence to the maximum aggregate allowed by statute and order correction of his mittimus.

¶ 2 Following a jury trial, defendant Dante Jeffries was found guilty of attempted first degree murder of a peace officer with a firearm (720 ILCS 5/8-4(a), 9-1(a)(1) (West 2016)), aggravated battery of a peace officer with a firearm (*id.* § 12-3.05(e)(2)), aggravated discharge of a firearm at

a peace officer (*id*. § 24-1.2(a)(3)), aggravated kidnapping with a firearm (*id*. § 10-2(a)(6)), armed robbery with a firearm (*id*. § 18-2(a)(2)), and aggravated vehicular hijacking with a firearm (*id*. § 18-4(a)(4)). He was sentenced to an aggregate term of 223 years' imprisonment.

¶ 3 On appeal, defendant first contends that the evidence is insufficient to support his conviction because the eyewitness identifications were unreliable, the physical evidence was "mishandled and potentially contaminated," and footage from Home Depot allegedly depicting defendant purchasing "kidnapping supplies" on the day of the incident was inconclusive as to his identity. Defendant also argues that the trial court erred in suppressing reference to a Civilian Office of Police Accountability (COPA) investigation related to the responding police officers' failure to activate their body worn cameras and in allowing the jury to hear testimony that a non-testifying co-defendant implicated defendant to the police in violation of *Bruton v. United States*, 391 U.S. 123 (1968) (admission of co-defendant's confession to another witness that implicated the defendant constituted prejudicial error).

¶ 4 Defendant further contends that the following cumulative errors by the trial court deprived him of his due process right to a fair trial: (1) prohibiting him from presenting an alibi defense; (2) ordering him to remain in hand and leg restraints during his trial; (3) overruling defense counsel's objection to testimony related to the *Bruton* violation; and (4) providing the jury with an annotated jury instruction. Finally, defendant argues that his sentence violated the holding of *Apprendi v. New Jersey*, 530 U.S. 466 (2000) and impermissibly exceeded the sum of the maximum terms authorized for the two most serious offenses. We affirm defendant's convictions, but reduce his aggregate sentence, and order correction of his mittimus.

¶ 5 I. BACKGROUND

¶ 6 Defendant was charged by indictment with numerous counts arising out of a series of offenses which occurred on July 21, 2017. Defendant was indicted with co-defendants Donzell Grant and Cortez Harrington but filed a pretrial motion to sever his case from that of Grant's and Harrington's. The motion was granted over the State's objection.

¶ 7 A. Pretrial Proceedings

¶ 8 1. Motions Related to Body Worn Cameras

¶ 9 The parties filed multiple pretrial motions. In relevant part, defendant filed a motion to dismiss or impose sanctions against the State for its failure to preserve evidence. Defendant argued that the police officers who responded to the robbery did not activate their body worn cameras during the incidents in violation of the Law Enforcement Officer-Worn Body Camera Act (Body Camera Act). See 50 ILCS 706/10-5 (West 2016).

¶ 10 After a hearing, the court found that Chicago police officer Victoria Mendoza did not activate her body worn camera; however, she responded to an alleged armed robbery where she was "fired upon immediately" and sustained a gunshot injury. Chicago police officer David Perez then continued his pursuit, and subsequently activated his body worn camera. The court found that exigent circumstances existed which excused the officers' failure to activate their body worn cameras in a timely manner. The court commented that the defense would have "every opportunity" to cross-examine Mendoza regarding her failure to activate her body worn camera. It found no due process violation or discovery violation regarding this evidence and denied defendant's motion.

¶ 11 Prior to trial, the State filed a motion *in limine* seeking to bar reference to a COPA investigation related to the alleged "body worn camera violation," and statements made by Officers

Mendoza and Perez in relation to the investigation as they were made "under duress." With respect to the COPA investigation, the court found that the officers gave their statements under duress, and so the statements were not admissible for impeachment purposes. The court also denied defense counsel's request to establish that a COPA investigation occurred, finding that the investigation "has nothing to do" with the events at issue. The court noted that the defense could establish that the officers had a duty to activate their body worn cameras and did not do so.

¶ 12 2. Alibi

¶ 13 Defendant stated in his answer to the State's motion for discovery that he may assert the affirmative defense of alibi as he "was in Riverdale at the time of the alleged offenses." The State filed a motion requesting the court compel defendant to provide more specific information as to the place where defendant claimed to be at the time of the alleged offense, as well as the names and addresses of any witnesses who would provide his alibi.

¶ 14 The week before the start of trial, the court noted that defendant needed to provide more specific information and could not rely upon "I wasn't there" as an alibi defense. It stated that if defendant did not establish "particulars" regarding his specific location and potential witnesses, it would strike his alibi defense. Defense counsel asserted that she did not have additional information regarding defendant's alibi defense but objected to the alibi defense being stricken.

¶ 15 After jury selection, defense counsel did not provide more specific information regarding defendant's alibi but continued to object to the striking of the affirmative defense. The court found that because defense counsel did not comply with the State's request for specificity, defendant could not proceed with the alibi defense at trial. The court noted that defendant could still testify that he was not one of the alleged offenders.

¶ 16 3. *Boose* Hearing

¶ 17 The State also requested that defendant remain in restraints during trial as he was a security threat. At a status hearing where defendant appeared by Zoom, the State represented that defendant had been considered "a serious security threat" by the Illinois Department of Corrections (IDOC) as the reason why he was not transported to court.

¶ 18 The court held a hearing pursuant to *People v. Boose*, 66 Ill. 2d 261 (1977), with defendant present. Defense counsel argued that defendant's restraints would interfere with the presumption of innocence because it would prejudice the jury against him. Defense counsel contended that she had not received documents from IDOC regarding the need for restraints and represented that defendant's behavior did not suggest he would attempt to escape.

¶ 19 The State argued that defendant had sustained another conviction which "stemmed from being involved in an unprovoked attack on jail guards *** in the Cook County Jail." The State also noted "security issues" that had been raised the prior few weeks at IDOC, although the State did not have the records to understand what prompted the IDOC investigation. The State noted that counsel table was skirted, preventing view of the restraints. The State requested that defendant be restrained with leg irons "at the minimum" along with IDOC personnel in the courtroom.

¶ 20 The court ordered that defendant be restrained with handcuffs and leg irons because it would be unsafe to have him in the courtroom without them. In ruling, the court addressed the factors outlined in *Boose* and noted that the courtroom was large and the case would likely attract observers. Defendant was not only charged with violent felonies in this case, he had other pending violent felony cases in other courtrooms and had been convicted for an attack on jail guards in a custodial setting. The court noted that it considered defendant's temperament and character during proceedings, as well as his age and physical attributes. With respect to the latter point, the court

commented that he was approximately 34 years old at the time of trial and "tall in stature and somewhat in build also."

¶ 21 It addressed defendant's "extensive" past criminal record, including an ongoing IDOC investigation for which they had no further information, but the court characterized as a "potential escape." The court noted that it had no information regarding threats made by defendant, risk of mob violence or attempted revenge by others, evidence of an attempt to rescue defendant, or the size and mood of the audience. The court also commented that the courtroom had "at least two" exits, and multiple guards would be present, including three IDOC guards wearing plain clothes. The tables in the courtroom were skirted and the jury would be seated two rows back. The court represented that it had checked the jury's vantage and was unable to see behind the defense table. The court noted that it also was unable to see that defendant's wrists were handcuffed and would rule that the parties be seated when the jury entered and exited the courtroom.

¶ 22 B. Jury Trial

¶ 23 The matter proceeded to a 2024 jury trial on two counts of the attempted first degree murder of Mendoza, three counts of the attempted first degree murder of Perez, one count of aggravated battery, one count of aggravated discharge of a firearm, four counts of aggravated kidnapping, four counts of armed robbery, and one count of aggravated vehicular hijacking.

¶ 24 1. T-Mobile Armed Robbery

¶ 25 The string of events comprising the offenses at issue began with an armed robbery at a T-Mobile retail store in a strip mall on July 21, 2017. The strip mall was located on the 4300 block of South Ashland Avenue in Chicago, Illinois. On the day of the incident, five employees were working: Angel Lopez, Samuel Bucio, Alejandra Garcia, Erick Escobedo, and Eduardo Macias. Every employee except Macias testified at trial as to the events of the armed robbery. Their

testimonies were largely consistent regarding the events inside the store and the general description of the offenders. Surveillance footage presented corroborated their testimonies.

¶ 26 According to the employees, two men entered the store together at around 1:30 p.m. One of the men was taller than six feet and muscular. The taller man, alleged to be defendant, wore a Chicago White Sox baseball hat, a dark blue and gray three-quarters length Henley-style shirt, pants, and light blue gloves. The other man was shorter and wore a Chicago Cubs baseball hat, "a Hollister shirt," and khaki shorts. Neither man wore face coverings. For ease, we will refer to the offenders as the taller man and the shorter man. Bucio and Escobedo identified defendant in court as one of the two offenders.

¶ 27 The two men pointed firearms at the employees and directed them to the back room of the store. Macias was in the back room when the men entered the store and fled through a door which led to an alley behind the store as the other employees were escorted to the back room. The men restrained the other T-Mobile employees on the ground using zip ties and demanded the safe combination codes.[1] The men then opened the safe, which was also located in the back room, and the shorter man placed phones inside a black garbage bag as the taller man went to the front of the store. The taller man returned with a customer and restrained him with the employees.

¶ 28 After they unloaded the safe, the taller man asked for the keys to the register. The taller man then went to the front of the store, and after a couple minutes, returned to the back room "[i]n a hurry." Both men then left with the bag of phones through the back door which led to the alley. After the men left, Lopez and Bucio broke their restraints, but Escobedo remained restrained. The employees returned to the front room, where Chicago police officer Nicholas Pronek had entered.

[1] Garcia was not restrained with zip ties but lay on her stomach on the ground with the other employees.

The employees told Pronek that the men were behind the store, and Garcia pointed to direct him. Pronek then observed the men crossing Ashland Avenue and described their clothing to other officers by radio before pursuing them on foot. After he departed, the employees next saw the men through windows to the front of the store where they were engaging in a fire fight with responding police officers.

¶ 29 Samantha Valdez worked at a Metro PCS store located across the street from the strip mall containing the T-Mobile store. During the incident, Valdez stood in front of the Metro PCS store with a coworker when she saw a marked police vehicle with its lights activated stop at the strip mall. Valdez then heard a woman in front of the T-Mobile store yell "that's them, that's them." The woman pointed at two men who crossed the street in the direction of the Metro PCS. The men then ran toward the Metro PCS store. Valdez heard three gunshots, and she and her coworker ran into the store. Valdez testified that the shorter man who was wearing a "cap" was discharging his firearm. The men then ran past the store.

¶ 30 For the defense, Valdez's coworker, Janet Garibay testified that at 1:30 p.m., she stood outside the store when she saw two men running across the street and heard gunshots. The men ran toward Garibay and Valdez. On cross-examination, Garibay stated that she saw "only one" of the men with a firearm on the street. The man she recalled wore khaki shorts but did not recall any details about the other man. She heard one gunshot and then "spaced out" and ran into the store with Valdez.

¶ 31 2. Police Action and the Offenders' Flight

¶ 32 Officers Mendoza and Perez, who worked together that day, responded to the scene of the robbery in a marked police vehicle, after having received a description of the offenders by radio. When they arrived, they saw the men crossing Ashland Avenue. The officers exited their vehicle,

at which point the taller man saw them. He grabbed his waistband, where Mendoza saw a firearm. The man discharged the firearm at Mendoza and Perez at least twice as both men ran. Both officers returned fire. Mendoza attempted to chase the men but realized that she could not move. She then noticed that her left knee had been shot, and her pants were covered in blood. Mendoza radioed for assistance before dressing the wound with a tourniquet. Another officer transported Mendoza to the hospital where she was treated. Mendoza's uniform was equipped with a body worn camera, but she did not activate it because "[i]t happened so fast."

¶ 33 On cross-examination, Mendoza stated that she did not activate her body worn camera while en route to the scene, which she estimated was about a mile in distance.

¶ 34 Perez, who was armed with a Glock 9 mm handgun, followed the two men as they ran through a nearby parking lot and jumped over the guardrail to an alley at 43rd Street and Ashland where they entered a black sedan, which turned south onto Marshfield Avenue. Perez pursued, and the vehicle stopped on Marshfield. The same two men exited the vehicle and discharged their firearms toward Perez, who returned fire once or twice. The vehicle drove away, and the two men "ran westbound through two separate gangways." Perez followed the shorter man, who attempted to open a gate at the rear of the alley. The shorter man then turned and discharged the firearm at Perez, who again returned fire.

¶ 35 As Perez radioed for assistance, the shorter man climbed over the gate into the alley and ran toward a gold van in the alley. The van, driven by the taller man, backed into the shorter man and pinned him against a garage before driving north. The shorter man then crawled into the garage. The van drove away after the driver shot at Perez, who then entered the alley and saw the damaged and partially open garage door. Other officers arrived and arrested the shorter man, Grant, who was inside.

¶ 36 On cross-examination, Perez stated that he believed that he activated his body worn camera when he drove to the scene, "but it did not turn on." As such, no footage captured the offenders crossing the street, the subsequent chase, or the offenders discharging firearms at Perez.

¶ 37 When defense counsel attempted to elicit testimony regarding a Chicago Police Department (CPD) policy to activate body worn cameras, the State objected and the court sustained its objection. During a sidebar, the court noted that defense counsel could ask whether Perez was "supposed to" activate his body worn camera but could not question Perez about CPD's policy because the jury would not be able to see the CPD general order regarding the activation of body worn cameras and such discussion would create "a trial inside of a trial." In the presence of the jury, defense counsel asked whether Perez wore the body worn camera on July 21, 2017, and did not activate it until he was in the alley by the garage. Perez stated that he "believe[d]" he activated it as they traveled to the scene; however, once he chased the offenders, he realized that he had not activated the camera and "hit it again."

¶ 38 Chicago police officer Penny Szeto responded to the robbery and "toured the area," looking for the black sedan. Szeto traveled to the 4500 block of Marshfield where a vehicle matching that description was parked on an angle by a fire hydrant. Szeto saw a firearm behind "the driver's side floor." Co-defendant Harrington approached and stated that he owned the vehicle, so he was placed into custody. On cross-examination, Szeto stated that she activated her body worn camera when she was in her squad car because "that's [what] *** [she was] required to do when *** responding to a law enforcement activity."

¶ 39 Mendoza was transferred to the trauma department of Stroger Hospital where she was admitted to the intensive care unit. At Stroger, medical personnel performed surgery on Mendoza's knee, and she recuperated in the hospital for "four to five days." Since the injury, Mendoza was

not "allowed to be on the street" and was assigned to the "commander's office in the Intelligence Unit" under "limited" duty.

¶ 40 Orthopedic surgeon Dr. Joel Williams examined Mendoza and noted that she was in pain and profusely bleeding. Dr. Williams recommended surgery due to the extent of the damage, which required the removal of fragments of her shattered kneecap. Dr. Williams performed surgery, which included reconstruction of her knee. After surgery, Mendoza was prescribed medication, and she was required to attend follow-up appointments.

¶ 41 3. Aggravated Vehicular Hijacking

¶ 42 Edgar Hilario-Montes testified that he was in the alley outside his garage on the 4300 block of Marshfield moving clothes from his gold minivan when he heard a sound "like fireworks" nearby. A man jumped over the fence from Hilario-Montes' gangway into the alley. The man aimed a firearm at Hilario-Montes' forehead and demanded the keys to his vehicle. Hilario-Montes gave the man his keys, but the door did not open, so the man discharged his firearm at the vehicle's driver side window. Around this time, a second man jumped over the fence and stood between the vehicle and a neighboring garage. The first man then entered the van, reversed, and hit the second man, "smash[ing] his legs" into the garage. The garage door was damaged and partially open after the incident. The second man "dragged himself in[to] the garage" after gesturing for Hilario-Montes "[t]o be quiet." The first man drove Hilario-Montes' vehicle away through a nearby alley.

¶ 43 When the police arrived, Hilario-Montes directed them to the man in the garage. Hilario-Montes then traveled with the officers to where his vehicle had crashed into a pole.

¶ 44 4. Police Investigation and Evidence Collection

¶ 45 Co-defendants Grant and Harrington were arrested on July 21, 2017. According to photographs in the record on appeal, Grant wore a black t-shirt labeled "Hollister" and khaki cargo shorts. Harrington wore a teal t-shirt labeled "YAS" and jeans.

¶ 46 The black Dodge Charger and gold Chrysler minivan were both processed by evidence technicians. Technicians photographed the exterior and interior of the vehicles, swabbed the door handles and interior for possible DNA evidence, and conducted gunshot residue tests. The swabs and gunshot residue kits were individually packaged.

¶ 47 Lindenhurst police officer Scott Slechter testified that on July 21, 2017, he worked as a police sergeant in the Chicago Police Department and responded to the incident. Slechter traveled to 59th and Wood Streets and saw a crashed minivan. Slechter then searched on foot for an offender. He located a black henley shirt with gray sleeves and two gloves underneath the front porch of a nearby house.

¶ 48 On July 21, 2017, former Chicago evidence technician Terrance McKitterick testified that he *inter alia*, photographed, packaged, and inventoried the gloves and shirt found underneath the porch. McKitterick packaged the items together when he inventoried them because "they were basically on top of each other." A photograph in the record on appeal depicts the shirt partially covering a glove on the ground. McKitterick acknowledged that initially he erroneously labeled the inventory item as solely containing gloves.

¶ 49 On cross-examination, McKitterick agreed with defense counsel's assertion that it was "very important" not to contaminate evidence during packaging and inventorying.

¶ 50 Chicago police detective Jonathan McCabe testified that he worked as an evidence technician on July 21, 2017. McCabe recovered, *inter alia*, six fired .40-caliber cartridge cases

across the street from the T-Mobile, two metal fragments on the floorboard of the parked squad vehicle, and a fired bullet from a nearby parking lot. At 43rd Street and Marshfield, McCabe noted "numerous vehicles" that were "struck by gun fire," and recovered four fired cartridge cases, two of which were 9 mm caliber and two of which were .40 caliber. In the alley, McCabe recovered *inter alia*, a fired .40-caliber cartridge case and a fired bullet. McCabe also collected and inventoried the firearm in the Dodge Charger and Perez's duty weapon.

¶ 51 Chicago police detective Scott Reiff testified that on July 21, 2017, he generated photo arrays which contained Grant's photograph. Reiff also tasked multiple people to be independent administrators for the arrays. That day, Reiff also spoke with Grant. The State then asked "[a]fter you spoke to Donzell Grant, were you looking for an individual?"

¶ 52 Defense counsel objected, and at the subsequent sidebar argued that the line of questioning was hearsay and potentially a basis for a mistrial, because the jury would be led to believe that Grant told Reiff defendant's name. The State contended that the questioning went to the "course of investigation" by Reiff, and it was not eliciting the content of the conversation. Defense counsel further argued that the question implicated the content of the conversation and was "improperly bringing in a codefendant's statements against an accused." The court allowed testimony regarding the conversation and the officers' subsequent actions as an exception so long as the Reiff did not testify as to the content of the conversation. The court noted that testimony describing that "after you talked to this person were you now looking for somebody" would be improper. The court warned the State that it would be "walk[ing] a tight line about" not eliciting testimony establishing that the police were "looking for a particular person" after speaking with Grant, but rather describing "what did [they] do next." Defense counsel continued to object to the line of questioning.

¶ 53 The State then asked Reiff "[a]fter you spoke to Grant, what did you do next?" Reiff testified that they "interviewed him several times." The State asked Reiff whether he contacted Sergeant Eichman, to which defense counsel objected, and the court sustained the objection. The State then asked whether Reiff "learn[ed] that Sergeant Eichman had somebody in the Area," to which defense counsel also objected and the court sustained the objection. The following colloquy then occurred:

[THE STATE]: What did you do after you talked to Grant?

[REIFF]: We continued the investigation and we were looking for an individual.

[THE STATE]: And who was that individual?

[REIFF]: Dante Jeffries.

¶ 54 Police sergeant Clark Eichman testified that on July 22, 2017, he received a photograph of defendant. He and his team traveled to a location where he believed defendant was located and conducted surveillance. Eventually he saw a man resembling defendant leaving the address, and after confirming that the man was defendant, whom he identified in court, the officers attempted to arrest him. Defendant fled and the officers chased him before placing him in custody.

¶ 55 Defendant was arrested and taken to the police station on July 22, 2017, at approximately 11:30 p.m., and the officers compiled photo arrays which included his picture. Reiff identified the photograph of defendant taken at the station which was included in the photo arrays at issue.

¶ 56 5. Witness Identifications

¶ 57 An independent administrator showed the photo arrays to Bucio, Lopez, Hilario-Montes, and Garcia on July 23, 2017. All relevant photo arrays and photo array advisory forms are in the record on appeal and have been viewed by this court.

¶ 58 On that day, Bucio, Lopez, Hilario-Montes, and Garcia all identified defendant in the photo array. In his advisory form, Bucio stated that defendant participated in the robbery and discharged a firearm at police officers "twice." Lopez identified him as the person who participated in the armed robbery, tied the employees with zip ties, and discharged his firearm at police officers. Hilario-Montes identified defendant as the person who took the keys to his van after pointing a firearm at him. He also noted that defendant shot the window and drove away in the van. Garcia stated that defendant threatened the employees to open the back door, restrained the employees and a customer, and ran through the door when police officers arrived.

¶ 59 Escobedo and Officer Perez also identified defendant in photo arrays on that day. In his advisory form, Escobedo identified defendant as the person who tied up the employees and asked them to open the safe. In his advisory form, Officer Perez noted that defendant displayed a weapon as he ran and discharged it in Perez's direction during "different times." Video footage, which was published and included in the record on appeal, depicts Perez filling out the advisory form and making the identification.

¶ 60 On cross-examination, Perez stated that he viewed an officer safety alert on July 22, 2017, which included a photograph, but did not recall the name of the individual. Defense counsel showed Perez the officer safety alert to refresh his recollection and noted that defendant was named in the officer safety alert along with his photograph and "a description of why he was wanted." On redirect examination, Perez stated that the officer safety alert was an internal document distributed to officers regarding the allegations that the individual discharged a firearm at a police officer. Perez was sent the alert by a fellow officer, and Perez responded to the officer, "yes, that's him." He did not study the alert prior to viewing the photo array at the hospital.

¶ 61 Defense counsel also presented prior photo arrays and advisory forms from July 21, 2017, which established that Bucio, Lopez, Escobedo, and Hilario-Montes had previously identified another individual in the photo arrays before defendant had been arrested. On that day, Lopez circled and initialed two people in the bottom row of the array, noting that the two individuals in the photo array looked like the men who robbed them. Hilario-Montes stated that he recognized the individual's face and "the little curls" in his hair. On that day, officers also showed Garcia a photo array where she could not make an identification as she "could not be sure" as the men were "wearing hats." At trial, Garcia testified that she had a better view of the taller man because the shorter man led her to the back room.

¶ 62 On July 22 and July 23, 2017, Mendoza viewed two separate photo arrays in the hospital but was unable to make an identification at either time. Valdez and Garibay also identified men who were not defendant.

¶ 63 6. Video Evidence

¶ 64 The T-Mobile store contained nine surveillance cameras, and Lopez reviewed the footage from all of them. The State published footage from the cameras which Lopez narrated. This footage is part of the record on appeal and has been viewed by this court. The footage encompasses multiple angles of the storefront and back room of the T-Mobile store and lacks audio. The footage depicts two men, consistent with the employees' descriptions, who entered the store with firearms drawn and took the employees from the storefront at gunpoint to the back room, which one of the employees opened with a passcode. As the men led the employees to the back room, a customer fled through the front door of the store. Both men wore baseball caps and due to the placement of the surveillance cameras, the upper halves of their faces are not visible. Macias was in the back room when the men enter the store, and he ran through the back exterior door. A few seconds later,

the men led the employees into the back room, and the employees laid on the ground on their stomachs. The men then restrained the employees' wrists with zip ties. The men opened the safe, and the shorter man placed items from the safe into a black garbage bag.

¶ 65 Approximately two minutes later, a customer entered the store, and the taller man took him to the back room by gunpoint where he restrained him using zip ties. Approximately another minute later, the taller man returned to the front of the store and walked toward the glass paneled doors and windows facing the street. He turned and ran to the back room where both men fled through the exterior door. At this time, a marked police vehicle approached the storefront, and a police officer entered the store. After the men left the store, the hostages exited the back room to communicate with the officer. Fewer than ten seconds after the police vehicle drove away, the hostages took cover and moved from the windows and doorway. Lopez testified that they did so because they heard gunshots.

¶ 66 A nearby business with a surveillance camera captured the incident outside the Metro PCS store. The footage was published to the jury with Valdez narrating and has been reviewed by this court. The footage does not contain audio and depicts Valdez and Garibay standing outside a storefront. They both look in the direction of two men crossing the street with a black bag and run inside the store as the men approach. The two men drop the bag and run toward the camera. They are wearing the same clothes as the individuals who were in the T-Mobile store, and both are holding firearms. The shorter man wearing the khaki shorts points the firearm in the direction of the other side of the street as he runs past the camera.

¶ 67 The Metro PCS store also contained a surveillance camera inside the store, which recorded the footage with audio. The storefront has glass windows in the direction of the street, and the door is open. The footage captured a police siren, and less than five seconds later multiple gunshots.

Valdez and Garibay run into the store. As they do so, the two men run past the store followed by a uniformed police officer.

¶ 68 Perez's body worn camera footage, which does not contain audio, depicts Perez emerging into an alley with his firearm drawn where he captures footage of a damaged residential garage with a gap at the bottom of the door. After other officers arrive, Grant displays his hands under the gap in the garage door and officers pull him out by his arms and place him in handcuffs.

¶ 69 The State also presented evidence of purchases made at a Home Depot located at "87th and the Dan Ryan" in Chicago on July 21, 2017.

¶ 70 Michael Davis was an asset protection specialist who was assigned to the Home Depot and had access to Home Depot's surveillance system. The cameras were functioning properly on July 21, 2017.

¶ 71 On July 22, 2017, he was contacted by the police and subsequently downloaded footage from cameras located at a center exit door and on the rooftop. The officers questioned him about the zip ties and latex gloves sold by the Home Depot. Davis generated a transaction receipt from when the items were sold, which included the date and time of the transaction and the location of the self-checkout used. The register recorded the transaction, and Davis provided officers with the footage. Prior to trial, Davis reviewed footage that he had downloaded, which accurately depicted the areas as they appeared on July 21, 2017. All the cameras, including the self-checkout, recorded events in real time.

¶ 72 On cross-examination, Davis stated that he did not recall seeing that the self-checkout footage included a date and time stamp showing that it was recorded on May 19, 2000, at 6:42 p.m.

¶ 73 On July 22, 2017, Chicago police sergeant Nathan Gadzik worked as a detective and assisted with the investigation of the armed robbery. Gadzik traveled to the Home Depot and spoke with Davis about the "sale of rubber gloves and zip ties." Davis determined that those items were sold the previous day in one transaction and gave Gadzik a receipt with the payment method and date. Gadzik identified the receipt, a copy of which is in the record on appeal. Gadzik then reviewed the security camera footage, where he saw relevant information at 12:03 p.m. on July 21, 2017, in the footage which ranged from 11:55 a.m. to 12:15 p.m., for the rooftop camera and entrance camera. Gadzik testified that the security camera time was accurate. Gadzik reviewed the footage and identified a still photograph captured from the footage on that date.

¶ 74 On July 23, 2017, Gadzik returned to the Home Depot and removed a memory storage card from a self-checkout station. Gadzik reviewed the files on the card and saw the people that he observed on the surveillance footage the previous day.

¶ 75 The relevant portions of footage from all three cameras were published, entered into evidence, and is part of the record on appeal. The videos show three men enter the Home Depot, dressed in clothing that matched the attire Davis, Harrington, and allegedly defendant wore during the incident, but their faces are visible. For ease, we refer to the third man as the taller man. After approximately five minutes, the taller man and Harrington, leave separately through the same doors. The taller man is carrying a plastic bag, and Harrington is carrying a blue item. After a short time, the men return together through the same doors and stand near the checkout counters for several minutes before leaving again. The outdoor camera footage depicts the men walking together to a black vehicle. Davis returns to the same vehicle during this time before walking near the store and reconvening with the other two men, and the three men walk back to the black vehicle together. The self-checkout footage specifically shows the taller man purchase items. The footage

is blurred but the man's face is visible and resembles defendant's photograph from the photo array. The timestamp for the self-checkout footage states "2000/05/19 18:42:28."

¶ 76 On cross-examination, Gadzik stated that the center exit and rooftop camera footage were not time stamped, and the date stamp for the self-checkout was from 2000. According to Gadzik, the presence of a date stamp did not mean that the date stamp was accurate, and Gadzik knew that the center exit and rooftop camera footage was from July 21, 2017, because he saw the time stamp at the Home Depot. The process of exporting the footage removed the time and date stamp.

¶ 77 7. Forensic Evidence

¶ 78 Retired forensic scientist Mary Wong testified that she was working as a trace analyst for the Illinois State Police Forensic Science Division on July 21, 2017. Wong analyzed four gunshot residue kits related to the case, including a kit collected from Hilario-Montes' van. Wong concluded that the sampled area from the driver's side area of the van had either been in the vicinity of a discharged firearm or had come into contact with "a primer gunshot residue related item."

¶ 79 The State introduced a stipulation that investigators from the Cook County State's Attorney's Office took and inventoried saliva samples from Grant, Harrington, and defendant and sent the samples to the CPD forensic services division. The samples were transferred to the Illinois State Police Forensic Science Center for further DNA testing.

¶ 80 Forensic scientist Michelle Bybee-Moody testified that she worked in the Biology DNA Section of the Illinois State Police Forensic Science Center in Chicago in July 2017. Bybee-Moody was recognized as an expert in the field of forensic biology and DNA analysis by the court. In relevant part, Bybee-Moody analyzed a buccal swab standard from defendant and identified a DNA profile suitable for comparison purposes. She initially received a pair of gloves and henley shirt under Inventory Number 13963879. The description of the item established that the inventory

should have been for "gloves *** recovered under a porch" but the inventory included two separate sealed bags for gloves and a shirt. Bybee-Moody noted the discrepancy, resealed the bag, and contacted the agency to clarify.

¶ 81 Later, Bybee-Moody received the same items sealed in separate individual bags under a new inventory number, 14558332. She performed a DNA analysis with regard to swabs taken from the gloves and shirt. Defendant's profile was included "as a major profile" for the gloves, with the statistical frequency for his profile being 1 in 4.8 septillion unrelated individuals. Defendant's profile was included as a contributor of a major male profile for the henley shirt as well, with the statistical frequency for his profile being 1 in 1.2 decillion unrelated individuals. Bybee-Moody testified that proper controls were run to ensure that the DNA instrumentation was functioning properly, and a proper chain of custody was maintained and documented during all times.

¶ 82 On cross-examination, Bybee-Moody stated that DNA can transfer from object to object and from a person to an object, so she is careful to avoid contamination. The items originally inventoried under Inventory Number 13963879, were described as "a pair of blue gray gloves recovered from under the front porch" at an address on the 5900 block of South Hermitage Avenue. Bybee-Moody attempted to perform her initial analysis of these items in August 2019. She received the items under the new inventory number in April 2020. Bybee-Moody knew that the new inventory contained the same items "[b]ased on the packaging," but acknowledged that she never opened the original items.

¶ 83 On redirect examination, Bybee-Moody testified that the packaging of the items had been marked twice because she received the bag with the items two different times. The packaging was in the same or substantially the same condition as it was when she received it those two times.

¶ 84 Forensic scientist Marc Pomerance testified that he examined the ballistic evidence recovered with respect to the case and opined that nine recovered .40-caliber cartridge casings were discharged from the same firearm, which had not been recovered. He also opined that five of the recovered 9 mm cartridge cases were fired from the same firearm, and two other recovered 9 mm cartridge cases were also fired from the same firearm, but Pomerance could not determine whether all seven cartridge cases came from the same firearm. On cross-examination, Pomerance stated that he examined a 9 mm Luger firearm and determined that the firearm did not fire any of the recovered cartridge cases.

¶ 85 The State also introduced the title from the Dodge Charger vehicle at issue, which shows that Harrington owned the vehicle.

¶ 86 7. Motions and Verdict

¶ 87 After the close of the State's evidence, defendant's counsel moved to strike Bybee-Moody's testimony regarding the shirt and gloves. Counsel argued that Bybee-Moody never looked at the items in the original packaging because they were inventoried incorrectly. Later, she received a different inventory with the shirt and gloves which she tested. The State did not provide information regarding the process creating a new inventory number, and whether the items were the same as those incorrectly inventoried.

¶ 88 The court denied the motion, noting that the State established a chain of custody, but a "time gap" existed which was "fodder for argument." The court disagreed with the defense that the issue affected the admissibility of the evidence but rather would affect the weight to be given to the evidence.

¶ 89 Prior to closing arguments, defense counsel moved for a mistrial based on the line of questioning related to Reiff and Grant, arguing that the line of questioning and answers elicited

were prejudicial. The court denied the motion, commenting that Reiff did not testify about the contents of the conversation but only stated that he spoke with Grant and "next" looked for defendant. The court noted a "reasonable inference that maybe he got some information," but the testimony established Reiff's course of conduct.

¶ 90 After closing arguments, the court tendered the jury instructions to the jury, including instructions to disregard questions to which objections were sustained, and to consider that Mendoza and Perez did not activate their body worn cameras. With respect to the latter, the court instructed that "[i]f you find by a preponderance of the evidence that the recording was intentionally not captured and the State did not prove a reasonable justification for the action, you should consider that in determining what weight to be given to the evidence."

¶ 91 After the jury reached their verdicts, the court noted that the verdict form for defendant's guilt regarding aggravated discharge with respect to Perez was marked, not clean. It did not contain the court's notes, but listed Illinois Pattern Jury Instruction (IPI) number 26.05, and was labeled "People's Instruction No. ____." Defense counsel moved for a mistrial because the form established "who asked for the instruction," and created a bias. The court denied defense counsel's motion but noted that "it may be an issue" and might address the matter further after the verdict forms were read.

¶ 92 The jury found defendant guilty of four counts of armed robbery, four counts of aggravated kidnapping, one count of aggravated vehicular hijacking, one count of aggravated discharge of a firearm, one count of aggravated battery, and three counts of attempted first degree murder. The jury also found that defendant personally discharged a firearm with respect to the attempted first degree murder charges. After the court set the matter for posttrial motions and sentencing, it asked

whether "[b]oth the State and the Defense had an opportunity also to review all the instructions before they were tendered to the jury," to which defense counsel replied, "[y]es, your Honor."

¶ 93 C. Posttrial Motions and Sentencing

¶ 94 Defense counsel filed a motion for a new trial, arguing *inter alia* the court erred in limiting defendant's ability to assert an alibi defense, denying defense counsel the ability to cross-examine Mendoza and Perez regarding CPD rules and regulations related to body worn cameras or the COPA investigation, and ordering defendant to remain in hand and leg restraints during voir dire and trial. Defense counsel also argued that defendant was denied a fair trial due to the State's questioning of Reiff.

¶ 95 Prior to the hearing for the motion on July 18, 2024, the court noted that defense counsel filed an amended motion for a new trial over email. The record on appeal does not contain this amended motion. After the hearing, the court denied the motion. In relevant part, the court found that defendant never asserted an affirmative alibi defense, but rather merely stated that he was not at the scene at the time of the offense. The court noted that "[t]his is not a trial by ambush." The court also found that Mendoza and Perez did not deny that they failed to timely activate their body worn cameras, and the jury received a negative inference instruction regarding the body worn cameras. Based on the evidence, Mendoza did not activate her body worn camera because she had been injured. Additionally, the COPA investigation was irrelevant because neither officer denied that they failed to activate their cameras. The court further noted that the defense's objections were sustained in large part as to Reiff's testimony, and that it held a hearing regarding the need to restrain defendant during trial where it considered all relevant factors in making that determination.

¶ 96 The matter proceeded to a sentencing hearing, where the State informed the court that it would be seeking a finding of severe bodily injury with respect to Mendoza to trigger a mandatory

consecutive sentence for the attempted murder of a police officer charge, in addition to the 20-year firearm enhancement for the three charges. Defense counsel responded that the State decided not to proceed with respect to counts that triggered the requirement that the jury find "great bodily harm," and so the jury never reviewed any issue regarding "severe bodily injury." Counsel argued that the State had the opportunity to have the jury decide the issue and did not pursue it during trial. The court agreed that the State did not proceed on any charges requiring a finding of great bodily harm.

¶ 97 After the hearing, the court sentenced defendant to three consecutive sentences of 40 years for the attempted murders of Mendoza (Count II) and Perez. It further sentenced defendant to consecutive terms of 20 and 15 years' imprisonment for the aggravated battery of a peace officer and aggravated discharge counts. The court sentenced defendant to 21 years' imprisonment on the four aggravated kidnapping counts, to run concurrent to each other and consecutive to Count II, to 21 years' imprisonment on the four armed robbery counts to run concurrent to each other and consecutive to Count II, and to 26 years' imprisonment for the aggravated vehicular hijacking count, inclusive of a 20-year firearm enhancement, to run consecutive to Count II and concurrent to the rest of the counts. Defendant was sentenced to an aggregate term of 223 years imprisonment.[2] In ruling, it found that Mendoza suffered severe bodily injury, given her testimony regarding her injuries and that she was no longer able to perform the duties of a police officer.

¶ 98 The court denied defendant's motion to reconsider sentence, noting that it believed the sentence was "justified," "appropriate," and on the "lower end" of the sentencing range.

[2] The court also ordered the sentence to run consecutively to defendant's sentence in the unrelated case 20 CR 5211 (01).

¶ 99 II. ANALYSIS

¶ 100 A. Sufficiency of the Evidence

¶ 101 On appeal, defendant first argues that the evidence is insufficient to sustain his convictions because the witness identifications were faulty where multiple eyewitnesses identified a different man as the perpetrator and the remaining eyewitnesses were unsure as to defendant's identity as the alleged offender. Defendant further argues that the State's evidence is insufficient where the DNA evidence was "mishandled and potentially contaminated," and the responding officers failed to activate their bodyworn cameras to capture footage of the incident.

¶ 102 1. Standard of Review

¶ 103 The standard of review for a challenge to the sufficiency of the evidence is "whether, viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Internal quotation marks and emphasis omitted.) *People v. Belknap*, 2014 IL 117094, ¶ 67. The trier of fact resolves conflicts in the testimony, weighs the evidence, and draws reasonable inferences from basic facts to ultimate facts. *People v. Brown*, 2013 IL 114196, ¶ 48. Accordingly, this court will not retry the defendant or substitute its judgment for that of the trier of fact on the weight of the evidence or credibility of witnesses. *Id*. A reviewing court must allow all reasonable inferences from the record in favor of the prosecution (*People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)) and will not reverse a conviction unless the evidence is "unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt." ((Internal quotation marks omitted.) *People v. Jackson*, 232 Ill. 2d 246, 281 (2009)).

¶ 104 Here, defendant was convicted of attempted first degree murder, aggravated battery of a peace officer with a firearm, aggravated discharge of a firearm at a peace officer, aggravated

kidnapping, armed robbery, and aggravated vehicular hijacking with a firearm. Defendant does not challenge the elements of the offenses, but rather the eyewitness identifications of him as one of the perpetrators, and the strength of the physical evidence against him.

¶ 105 2. Identifications

¶ 106 The testimony of a single witness is sufficient to convict if the testimony is positive and credible, even where contradicted by the defendant. *People v. Gray*, 2017 IL 120958, ¶ 36. Here, six eyewitnesses, Lopez, Escobedo, Garcia, Bucio, Hilario-Montes, and Officer Perez viewed photo arrays and identified defendant as the one of the offenders to police officers. Bucio, Escobedo, and Perez identified defendant in court as well. The jury also heard evidence that Bucio, Lopez, Escobedo, and Hilario-Montes identified different men in prior photo arrays, and prior to the identification, Perez viewed an officer safety alert which included a photograph of defendant.

¶ 107 Ultimately, the jury is responsible for determining the credibility of the witnesses and the weight of the evidence. See *Brown*, 2013 IL 114196, ¶ 48. The jury heard all the testimony, and by finding defendant guilty, determined the State's witnesses were credible in identifying him as one of the robbers. We defer to those credibility determinations. See *id.*

¶ 108 That said, where a finding of guilty depends on eyewitness testimony, the reviewing court must decide whether a factfinder could reasonably accept the testimony as true beyond a reasonable doubt. *Gray*, 2017 IL 120958, 36. Testimony may be found insufficient only "where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 109 Defendant suggests that the factfinder's credibility determinations were insufficient as they do not meet the standard for reliability under the test outlined in *Neil v. Biggers*, 409 U.S. 188 (1972). These factors include: (i) the witness's opportunity to view the defendant during the

offense; (ii) the witness's degree of attention at the time of the offense; (iii) the accuracy of the witness's prior description of the defendant; (iv) the witness's level of certainty at the subsequent identification; and (v) the length of time between the crime and the identification. *People v. Slim*, 127 Ill. 2d 302, 308 (1989).

¶ 110 However, as recently clarified by our supreme court, the *Biggers* test concerns suppression of witness identification and "simply does not apply to a review of the sufficiency of the evidence." *People v. Johnson*, 2026 IL 131337, ¶ 65. The *Biggers* factors are relevant as "part of the totality of circumstances" when reviewing the jury's credibility determination, but the reviewing court must follow the deferential *Jackson* standard for reviewing the sufficiency of the record. *Id*. ¶ 72.

¶ 111 Defendant challenges the witnesses' identifications by emphasizing, in particular, the "extreme uncertainty" about their identifications. Defendant notes that many of the witnesses initially identified another man in a photo array before police officers arrested defendant. However, when presented with a second photo array containing defendant's picture, four T-Mobile employees identified defendant as the man who was involved in the armed robbery, Hilario-Montes identified him as the man who hijacked his vehicle, and Officer Perez identified him as the man who discharged a firearm toward the officers before fleeing. Garcia, in particular, did not identify any men from the first photo array but identified defendant in the second. She asserted that she had a better view of the taller man, defendant, during the robbery. Again, the testimony of a single witness is sufficient to convict if the testimony is positive and credible. *Gray*, 2017 IL 120958, ¶ 36.

¶ 112 Considering the totality of the circumstances, the witnesses had the opportunity to view defendant, who participated in the events during broad daylight and without a facial covering. They made their identifications a mere two days afterward. Significantly longer lengths of time

have not rendered identifications unreliable. See, *e.g.*, *People v. Holmes*, 141 Ill. 2d 204, 242 (1990) (18-month delay between crime and positive identification); *People v. Malone*, 2012 IL App (1st) 110517, ¶ 36 (one year and four-month delay between crime and positive identification). Although defendant challenges the witnesses' attention due to the presence of a firearm, they described the events in detail and with specificity, and their testimony was corroborated by video footage of the events. See *In re J.J.*, 2016 IL App (1st) 160379, ¶ 30 (finding a witness's detailed and descriptive testimony of the robbery indicated she was attentive during the encounter despite having a gun pointed at her).

¶ 113 In sum, the record does not compel the conclusion that that no reasonable person could accept the identification testimony beyond a reasonable doubt. *Cunningham*, 212 Ill. 2d at 280. Considering the witness identifications in the light most favorable to the State, as we must, such identifications were sufficient for a reasonable trier of fact to find defendant guilty beyond a reasonable doubt.

¶ 114 3. Physical Evidence and Body worn Camera Footage

¶ 115 Defendant further contends that the evidence was insufficient to support his conviction where the physical and video evidence was inconclusive or otherwise mishandled, and the responding officers failed to activate their body worn cameras in a timely manner to capture footage of the police shooting.

¶ 116 First, we note that lack of physical or video evidence does not preclude defendant's convictions, as a single positive and credible identification is sufficient to convict. See *Gray*, 2017 IL 120958, ¶ 36; see also *People v. Campbell*, 2019 IL App (1st) 161640, ¶ 33. Therefore, even if

we disregard the DNA evidence and video footage, the eyewitness identifications remain sufficient to establish that defendant committed the offenses.

¶ 117 Defendant nevertheless contends that the improper packaging together and mislabeling of the gloves and shirt renders the result showing defendant's DNA on the items inconclusive. Defendant argues that due to the error, it is "unclear" whether defendant's DNA existed on both objects when McKitterick collected them, or whether the DNA transferred from one item to another due to their shared packaging. We note that the gloves and shirt had been touching when discovered, so any putative "contamination" was not necessarily due to the packaging. The items were also worn together by one of the offenders, as seen on the surveillance footage, and their placement together implies that the same person removed them to hide them. As established, defendant was found to be the major profile on both items. Nevertheless, the court noted that the "time gap" in the State's chain of custody could affect the weight of the evidence, not its admissibility. Therefore, the jury could consider and properly weigh the DNA evidence, in the context of the improper packaging and labeling. We, again, defer to the jury's determination with respect to the weight of this evidence. See *Brown*, 2013 IL 114196, ¶ 48.

¶ 118 Finally, defendant challenges the video footage, including the Home Depot surveillance videos, which were improperly timestamped, and the failure for the responding officers to activate their body worn cameras in a timely manner. The officers' failure to timely activate their body-worn cameras was a circumstance the jury could consider in weighing their testimony, but it did not render the evidence insufficient. Additionally, other surveillance footage from the area corroborated their testimony.

¶ 119 Regarding the Home Depot surveillance footage, the videos show three men enter a Home Depot store together wearing the same clothing as the three individuals associated with the events

of July 21, 2017. They purchased items and left the store together in a black sedan. A receipt from that day shows the purchase of gloves and zip ties. A man resembling defendant is shown purchasing items on footage from a self-checkout terminal with a timestamp marked "2000/05/19 18:42:28." Davis, the Home Depot asset protection specialist, testified that the surveillance videos were all from July 21, 2017. Again, although the self-checkout footage is misdated, the man is dressed in the same clothing and was purchasing items used to facilitate the armed robbery. The reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004).

¶ 120 In sum, viewing the evidence in the light most favorable to the State, we conclude a rational trier of fact could have found defendant guilty of the offenses at issue.

¶ 121 B. Suppression of the COPA Investigation

¶ 122 Defendant also argues that the court erred in suppressing reference to statements made by Officers Mendoz and Perez during the COPA investigation arising from their failure to activate their body worn cameras. Defendant contends that the court, thus, prevented defendant from presenting a complete defense and deprived him of a fair trial. Defendant concludes that the exclusion of this evidence was not harmless error because the jury would have likely reached a different result if such evidence was presented.

¶ 123 Evidence is generally admissible if it is relevant. Ill. R. Evid. 402 (eff. Jan. 1, 2011). Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. Ill. R. Evid. 401 (eff. Jan. 1, 2011). The admissibility of evidence is within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. *People v. Brand*, 2021 IL 125945, ¶ 36. A trial court abuses its discretion when its decision is "arbitrary,

fanciful, or unreasonable or when no reasonable person would agree with the trial court's position." *Id.*

¶ 124 As an initial matter, defendant argues that the officers' statements made during the COPA investigation were not only relevant but would have changed the result of the trial had they been presented. Illinois Rule of Evidence 103(a)(2) provides, in relevant part, that "[e]rror may not be predicated upon a ruling which admits or excludes evidence unless *** the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked." Ill. R. Evid. 103(a)(2) (eff. Oct. 15, 2015). A contemporaneous objection or offer of proof must be made to preserve a claim of error concerning the admission of evidence. Ill. R. Evid. 103(b)(1) (eff. Oct. 15, 2015); *People v. Gutierrez*, 2024 IL App (2d) 230260, ¶ 34.

¶ 125 The record, however, does not define the statements at issue, as the court made an *in camera* review of documents related to the investigation and the parties did not refer to any statements during oral argument. Nor did defendant make an offer of proof with regard to the substance of any such statements. Thus, any argument related to alleged statements made during the course of the COPA investigation is barred by Rule 103(a)(2). See *People v. Andrews*, 146 Ill. 2d 413, 421 (1992) ("The failure to make an adequate offer of proof results in a waiver of the issue on appeal.").

¶ 126 The court did not err in barring reference to the COPA investigation or CPD regulations. Defense counsel established that both officers were supposed to activate their body-worn cameras and failed to do so. The court also gave a negative-inference instruction. Accordingly, the jury had

the information necessary to consider the officers' failure to activate their cameras in weighing their testimony.

¶ 127 The court did not err in suppressing reference to the COPA investigation or CPD regulations because such matters were irrelevant as to whether the events on July 21, 2017, occurred the way the officers testified. Even considering such matters for impeachment purposes, defense counsel elicited testimony that neither officer timely activated his or her body cameras, and that they were required to do so. The court also introduced a negative inference jury instruction regarding the officers' failure to activate their body cameras. The jury, thus, could consider both officers' failure to timely activate their body cameras, in context, in determining the weight of their testimonies.

¶ 128 Nevertheless, even assuming *arguendo* that the trial court did err in suppressing reference to the investigation and CPD regulations, such error is harmless. "An evidentiary error is harmless where there is no *reasonable probability* that the jury would have acquitted the defendant absent the error." (Emphasis in original.) *People v. Pinkett*, 2023 IL 127223, ¶ 39.

¶ 129 Even if we give Officer Perez and Mendoza's testimonies little weight, multiple eyewitness accounts and surveillance footage establish that the two men who robbed the T-Mobile store participated in a shootout with the police officers which resulted in injury to Officer Mendoza's knee. Several T-Mobile employees identified defendant as one of the two men who robbed the store and discharged his firearm at the officers. Hilario-Montes testified regarding events in the alley and identified defendant. It is likely, even discounting the officers' testimonies, that no

reasonable probability existed that the jury would have acquitted defendant of the charges. See *id*. Thus, defendant is not entitled to relief.

¶ 130 C. Violation of the Confrontation Clause

¶ 131 Defendant additionally contends that he was denied his sixth amendment right to confront adverse witnesses when the State was permitted to elicit Detective Reiff's testimony establishing that codefendant Grant implicated defendant to police officers. Defendant argues that the violation "necessarily influenced" the jury's finding.

¶ 132 The sixth amendment of the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right *** to be confronted with the witnesses against him." U.S. Const., amend. VI. This right is known as the confrontation clause and extends to the states through the fourteenth amendment. *People v. Stechly*, 225 Ill. 2d 246, 264 (2007). The right to confrontation protects a defendant from testimonial hearsay. *People v. Barner*, 2015 IL 116949, ¶ 71.

¶ 133 Hearsay is a statement, other than the one made by the declarant while testifying at trial, offered into evidence for the truth of the matter asserted. *People v. Leach*, 2012 IL 111534, ¶ 66 (citing Ill. R. Evid. 801(c) (eff. Jan. 1, 2011)). "Testimony by a third party as to statements made by another nontestifying party identifying an accused as the perpetrator of a crime constitutes hearsay testimony and is inadmissible." (Internal quotation marks omitted.) *People v. Yancy*, 368 Ill. App. 3d 381, 385 (2005). A co-defendant's statement incriminating a defendant is "inherently unreliable," especially when the co-defendant does not testify at trial and, therefore, cannot be

cross-examined. *People v. Ochoa*, 2017 IL App (1st) 140204, ¶ 37 (citing *Bruton v. United States*, 391 U.S. 123, 136 (1968)).

¶ 134 Statements used to describe the course of a police investigation are not hearsay, as they are not introduced to prove the truth of the matter asserted, but rather are "offered for the limited purpose of explaining why the police conducted their investigation as they did or why they arrested [the] defendant." *People v. Armstead*, 322 Ill. App. 3d 1, 12 (2001). An officer, thus, may testify about his conversations with others when such testimony is offered to show the investigative steps taken by the officer, even if "it suggests that a nontestifying witness implicated the defendant." *People v. Simms*, 143 Ill. 2d 154, 174 (1991). Such testimony is admissible even if the information is derived from a co-defendant. *People v. Miranda*, 2022 IL App (1st) 200634-U, ¶ 184 (citing *People v. Williams*, 52 Ill. App. 3d 81, 87-88 (1977)). Accordingly, a statement that a police officer spoke with a witness and then "look[ed] for" the defendant does not concern the substance of the conversation but rather focuses on the investigatory procedure. *People v. Gacho*, 122 Ill. 2d 221, 248 (1988).

¶ 135 Here, the State attempted to elicit testimony regarding Detective Reiff's actions after speaking with co-defendant Grant. The trial court specifically sustained defense counsel's objections to the State's questions as to whether Reiff "looked for" or "learned about" someone after speaking with Grant but allowed the State to question Reiff regarding his next steps after speaking with Grant. Reiff then stated that after he spoke with Grant, he was "looking for an individual": defendant. Although this testimony does lead to the natural inference that Grant

implicated defendant to Reiff, it focuses on Reiff's investigative process, rather than the contents of his conversation with Grant. See *id*.

¶ 136 To the extent that the State's leading questions as to whether Reiff "looked for" or "learned about" an individual implicates testimonial hearsay, the court sustained defense counsel's prompt objections to both questions and later instructed the jury to disregard questions to which objections were sustained. See *People v. Risper*, 2015 IL App (1st) 130993, ¶ 46 ("The prompt sustaining of an objection, combined with a proper jury instruction to disregard the testimony, is typically sufficient to cure an error involving inadmissible hearsay."). The State also did not reinforce this evidence by reminding the jury that Grant implicated defendant during closing arguments. See *Ochoa*, 2017 IL App (1st) 140204, ¶ 54 (the State improperly reinforced testimony that the defendant's co-defendants implicated him to the police in closing arguments). Thus, Reiff's testimony regarding his next steps after conversing with Grant did not violate the confrontation clause.

¶ 137 Even if the trial court had erroneously admitted such testimony, any subsequent error would be harmless. "The improper admission of hearsay evidence is harmless error where it is merely cumulative or is supported by a positive identification and other corroborative circumstances." (Internal quotation marks omitted.) *People v. Coleman*, 2024 IL App (1st) 220917-U, ¶ 36. As we have previously established, multiple eyewitnesses identified defendant as one of the perpetrators before Reiff testified, and the State also presented a significant amount of video and physical evidence linking defendant to the offenses. Thus, Reiff's testimony that he was

"looking for" defendant after speaking with Grant was merely cumulative of other properly admitted evidence in the record. See *id*. Accordingly, defendant's claim lacks merit.

¶ 138 D. Cumulative Error

¶ 139 Defendant additionally contends that the following cumulative errors by the court deprived him of a fair trial: (1) prohibiting defendant from presenting an alibi defense; (2) ordering defendant to remain in hand and leg restraints during trial; (3) overruling defense counsel's objection to testimonial hearsay that a codefendant implicated him to police; and (4) providing the jury with an improperly annotated jury form.

¶ 140 The cumulative effect doctrine states generally that "individual trial errors that do not entitle a defendant to appellate relief may do so if the errors, when considered in the aggregate, 'have the cumulative effect of denying [the] defendant a fair trial.' " *People v. Quezada*, 2024 IL 128805, ¶ 46 (quoting *People v. Speight*, 153 Ill. 2d 365, 376 (1992). There is generally no cumulative error where the alleged errors do not amount to reversible error on any individual issue. *People v. Green*, 2017 IL App (1st) 152513, ¶ 118. We consider each alleged error in turn.

¶ 141 1. Alibi Defense

¶ 142 Defendant first argues that the trial court erred by preventing him from presenting an alibi defense, precluding him "from fully defending himself against the State's accusations."

¶ 143 Under the Supreme Court Rules, defense counsel shall inform the State of the following information with respect to a potential alibi defense: "specific information as to the place where he maintains he was at the time of the alleged offense." Ill. S. Ct. R. 413(d)(iii) (eff. July 1, 1982). The Rules also provide for sanctions where a party fails to comply with an applicable discovery rule, including the exclusion of such evidence. Ill. S. Ct. R. 415(g)(i) (eff. Oct. 23, 2020). We

review a trial court's imposition of a discovery sanction for an abuse of discretion. *People v. Wright*, 2013 IL App (1st) 103232, ¶ 65.

¶ 144 Here, defendant contends that he wished to assert that he was in "Riverdale" at the time of the incident. The State subsequently filed a motion seeking specificity, including the names and addresses of individuals who could corroborate his alibi. Defendant never provided more specific information to the State or the court, so the court struck the defense prior to trial. We find the court did not abuse its discretion in excluding defendant's alibi defense, as defendant failed to provide "specific" information regarding his alibi. The purpose of Rule 413 is to "prevent surprise or unfair advantage and to aid in the search for the truth." (Internal quotation marks omitted.) *Id*. By just stating he was in "Riverdale," the State was precluded from investigating defendant's alleged alibi. The court, therefore, did not abuse its discretion in excluding such alibi defense. See *id*.

¶ 145 2. *Boose* Hearing

¶ 146 Defendant next contends that the trial court erred by ordering that he remain in hand and leg restraints during trial and be accompanied by additional IDOC guards during the proceedings. Although he notes that the court considered factors outlined in *People v. Boose*, 66 Ill. 2d 261 (1977), he contends that her determination that defendant required handcuffs in addition to leg restraints was unsupported. He argues that these decisions violated his right to a fair trial.

¶ 147 It has long been held that the shackling of a defendant should be avoided as it is prejudicial to defendant, restricts his ability to assist counsel during trial, and offends the dignity of the judicial process. *Boose*, 66 Ill. 2d at 265. The *Boose* court, however, explained that a defendant may be shackled if an indication exists that the defendant may try to escape, pose a threat to the safety of courtroom occupants, or disrupt the order of the courtroom. *Id*. at 266. It identified several factors a circuit court should consider in determining whether to shackle a defendant, including the

seriousness of the charges, defendant's physical attributes and temperament, his past record, past escapes or attempted escapes, and the nature and physical security of the courtroom. *Id*. at 266-67.

¶ 148 Ultimately, the need for shackling is a determination within the discretion of the circuit court and will be reviewed for an abuse of discretion. *People v. Urdiales*, 225 Ill. 2d 354, 416 (2007). However, a circuit court should place its reasons for shackling a defendant on the record and provide defense counsel with an opportunity to explain why defendant should not be shackled. *People v. Buss*, 187 Ill. 2d 144, 216 (1999). Generally, a single reason for shackling a defendant has been held to be insufficient justification for the restraint, but courts have found no abuse of discretion where a court has expressed more than a single reason. *Urdiales*, 225 Ill. 2d at 416.

¶ 149 Here, defendant does not contend that the circuit court failed to justify its reasons for shackling defendant. Instead, he argues that the court ordered excessive security measures without adequate support, *i.e.* handcuffs rather than solely the leg restraints requested by the State. However, in ruling, the court emphasized repeatedly that defendant was a security threat, noting an open investigation regarding an escape attempt and a conviction regarding another incident wherein he attacked prison guards in a custodial setting. The court also noted that it would not seat jurors in the front row and that both tables would be skirted. The court represented that it had checked the jury's vantage to ensure they could not see the restraints and noted that it could not see that he was handcuffed. The record does not contain evidence that any juror saw the shackles.

See *People v. Reese*, 2017 IL 120011, ¶ 54 (the skirting around both counsel tables reduced the impact on the dignity of the court proceedings).

¶ 150 Ultimately, the court considered the *Boose* factors in depth and determined that shackling defendant's hands and legs, together with additional non-uniformed IDOC presence, was necessary for safety in the courtroom. Given this record, as well as the court's efforts to conceal the restraints from the jury, we cannot say that the court abused its discretion. See *Urdiales*, 225 Ill. 2d at 416.

¶ 151 3. Testimonial Hearsay

¶ 152 As noted above, Reiff's testimony was not testimonial hearsay and, thus, properly admitted. Therefore, there is no error. See *Green*, 2017 IL App (1st) 152513, ¶ 118.

¶ 153 4. Marked Jury Form

¶ 154 Defendant argues that the trial court erred when it provided the jury with a marked verdict form establishing that the document was submitted by the State. He contends that the court, therefore, influenced the jury in favor of the State due to its purported bias toward the State.

¶ 155 As an initial matter, defense counsel moved for a mistrial regarding this issue, which constituted a timely objection; however, he did not raise the claim in a posttrial motion. Thus, the issue is forfeited on appeal. See *People v. Brand*, 2021 IL 125945, ¶ 32. Defendant nevertheless requests that we review it under either prong of the plain error doctrine. The plain error doctrine allows a reviewing court to consider an unpreserved claim where a clear and obvious error occurred and (1) the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, or (2) the error is so serious that it affected the fairness of the trial and challenged the integrity of the judicial process. *People v. Sebby*, 2017 IL 119445, ¶ 48. The first step of the review is to determine whether there was a clear or obvious error at trial. *Id.* ¶ 49.

Here, we need not determine the applicability of either prong of the plain error doctrine because we find no error.

¶ 156 Defendant essentially contends that the circuit court displayed bias against him for providing the jury with a verdict form labeled "People's Instruction No. ____." "A trial judge is presumed to be impartial, and the burden of overcoming this presumption rests on the party making the charge of prejudice." *Eychaner v. Gross*, 202 Ill. 2d 228, 280 (2002). To that end, allegations of judicial bias or prejudice must be viewed in context and evaluated in terms of the trial judge's specific reaction to the events taking place. *People v. Jackson*, 205 Ill. 2d 247, 277 (2001). A defendant must demonstrate "that there are facts and circumstances which indicate that the trial judge was prejudiced" and must establish "actual prejudice, not just the possibility of prejudice." *People v. Jones*, 219 Ill. 2d 1, 18 (2006).

¶ 157 Defendant has not established actual prejudice, as he has not established how the tendering of a single marked verdict form establishes the appearance of a bias toward the State. The circumstances surrounding the transmission of the form establish multiple exchanges of the jury forms and instructions during the jury instruction conference. Defendant has not met his burden to establish that the transmission of the marked form to the jury was not accidental rather than bias toward the State. See *Jones*, 219 Ill. 2d at 18. Additionally, defendant's contention that the marked

form prejudiced the jury against him is speculative and conclusory. We, thus, find no error. Where there is no clear and obvious error, there can be no plain error. *Sebby*, 2017 IL 119445, ¶ 49.

¶ 158 4. Summary

¶ 159 In sum, defendant's assertion of cumulative error fails because none of defendant's claims constitute error. See *Green*, 2017 IL App (1st) 152513, ¶ 118. Thus, defendant was not denied a fair trial. See *Quezada*, 2024 IL 128805, ¶ 46

¶ 160 E. Sentencing Issues

¶ 161 As a final matter, defendant attacks his sentence by arguing that it violates the holding in *Apprendi v. New Jersey*, 530 U.S. 466 (2000), where the court impermissibly found that defendant's conduct caused "severe bodily injury" to trigger mandatory consecutive sentencing. Defendant argues that the court "usurped the role of the jury" by doing so. Defendant also argues that the court impermissibly sentenced defendant to an aggregate term in excess of the maximum statutory limit. We consider each of these sentencing arguments in turn.

¶ 162 1. *Apprendi* Violation

¶ 163 Under *Apprendi v. New Jersey*, the United States Supreme Court held that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Id*. at 490. It is settled law in Illinois that "*Apprendi* concerns are not implicated by consecutive sentencing" as sentences which run consecutively are "not transmuted into a single sentence" but remain "discrete." *People v. Wagener*, 196 Ill. 2d 269, 286 (2001). As defendant's sentences were not enhanced, but rather ordered to be served consecutively, the trial court did not "usurp the role

of the jury" in making its factual finding that defendant caused severe bodily injury to Officer Mendoza. See *id*.

¶ 164 Defendant also appears to conflate the concepts of "great bodily harm" and "severe bodily injury" when he contends that the court violated *Apprendi* in finding that Mendoza suffered severe bodily injury. "Great bodily harm" defines an offense and determines whether a sentencing enhancement applies, but "severe bodily injury" mandates consecutive sentencing. *People v. Alvarez*, 2016 IL App (2d) 140364, ¶¶ 23-24. The jury, therefore, was not required to make any factual finding regarding "severe bodily injury" for purposes of mandatory consecutive sentencing. See *Wagener*, 196 Ill. 2d at 286.

¶ 165 2. Violation of Maximum Aggregate Sentence

¶ 166 Defendant's final contention of sentencing error is that the court failed to follow Illinois sentencing rules regarding maximum consecutive sentences, as the aggregate of the consecutive sentences exceeded the sum of the maximum terms for the two most serious felonies involved.

¶ 167 As initial matter, defendant did not preserve this sentencing error by making a timely objection and raising the issue in a post-sentencing motion. See *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). In his reply brief, defendant seeks review under the second prong of the plain error doctrine. In the sentencing context, the plain error doctrine allows a reviewing court to consider an unpreserved claim where a clear and obvious error occurred and (1) the evidence at the sentencing hearing was closely balanced, or (2) the error was so egregious as to deny the defendant a fair sentencing hearing. *Id*. at 545. Sentencing errors can be reviewed under the second prong of

plain error review where, as here, a defendant's substantial rights are affected. See *People v. Myrieckes*, 315 Ill. App. 3d 478, 483 (2000).

¶ 168 Under the Unified Code of Corrections, "the aggregate maximum of consecutive sentences for offenses that were committed as part of a single course of conduct during which there was no substantial change in the nature of the criminal objective shall not exceed the sum of the maximum terms *** for the 2 most serious felonies involved." 730 ILCS 5/5-8-4(f)(2) (West 2024). This limitation shall not apply for offenses not committed as part of a single course of conduct where there was no substantial change in the nature of the criminal objective. *Id*.

¶ 169 Whether a defendant's actions constituted a single course of conduct for purposes of section 5-8-4(f)(2) is a question of fact for the circuit court and we will uphold the court's finding unless it is against the manifest weight of the evidence. *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 102. A factual finding is against the manifest weight of the evidence "only if the opposite conclusion is readily apparent or when the finding appears to be unreasonable, arbitrary, or not based on the evidence." *Id*. The circuit court made no explicit statement finding that defendant's criminal objective changed between the armed robbery, attempted murder of a peace officer, and aggravated vehicular hijacking. However, the parties do not dispute the facts underlying the issue, and so we can address the issue. *People v. Monroy-Martinez*, 2024 IL App (1st) 221684-U, ¶ 39.

¶ 170 "A course of conduct is not necessarily confined to a single incident but may encompass a range of activity." *People v. Daniel*, 311 Ill. App. 3d 276, 287 (2000). The term objective means "something toward which effort is directed." *Id*. The inquiry, thus, turns on whether the

defendant's acts were independently motivated. *Monroy-Martinez*, 2024 IL App (1st) 221684-U, ¶ 40.

¶ 171 Here, we find that defendant's actions were not independently motivated as his criminal objective was to rob the T-Mobile, and "inherent in any plan to rob a store is also an intention for the robber to escape from the premises with the purloined proceeds." *People v. Arrington*, 297 Ill. App. 3d 1, 5 (1998) (no substantial change in the defendant's criminal objective for imposition of consecutive sentences); see also *People v. Robinson*, 2015 IL App (1st) 130837, ¶ 107 (citing *Arrington* favorable for the related concept as to whether the conduct was "unrelated" for purposes of extended-term sentencing). Defendant engaged in the firefight with police officers and subsequently hijacked Hilario-Montes' vehicle in order to effectuate his escape. See *id*.

¶ 172 The two most serious felonies involved were two convictions for attempted murder of peace officers Mendoza and Perez, with a sentencing range of 20 to 80 years' imprisonment. 720 ILCS 5/8-4(c)(1)(A) (West 2016); 730 ILCS 5/5-8-1(a)(1)(c)(iii) (West 2016). The court additionally imposed 20-year firearm enhancements for the offenses, as defendant personally discharged a firearm in the direction of Mendoza and Perez. 720 ILCS 5/8-4(c)(1)(C) (West 2016). Our supreme court has ruled that imposition of the enhanced status-based sentence in conjunction with a 20-year firearm enhancement is not an improper double enhancement. *People v. Taylor*, 2023 IL 128316, ¶¶ 61-63. Thus, the maximum aggregate sentence for the two offenses is 200 years' imprisonment.

¶ 173 The court's imposition of a 223-year sentence is, thus, erroneous. In the interest of judicial economy, we reduce defendant's sentence to 200 years, and order defendant's mittimus be corrected. See Ill. S. Ct. R. 615(b)(4) (eff. Jan. 1, 1967). We further direct the clerk of the circuit

court to correct the mittimus to reflect the reduced sentence. See *People v. Kline*, 2024 IL App (1st) 221595, ¶ 91.

¶ 174 III. CONCLUSION

¶ 175 For the foregoing reasons, we affirm defendant's convictions, reduce defendant's sentence to reflect the maximum aggregate sentence allowed by statute, and correct the mittimus to reflect the correct sentence. We otherwise affirm the judgment of the circuit court of Cook County.

¶ 176 Affirmed as modified; mittimus corrected.