

2012 IL App (2d) 101247-U
No. 2-10-1247
Order filed May 8, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-1138
)	
TORRENCE DuPREE,)	Honorable
)	Daniel B. Shanes,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Burke concurred in the judgment.

ORDER

Held: (1) The trial court did not abuse its discretion in admitting evidence of a phone call that defendant attempted to place to a witness, as a reasonable inference was that defendant attempted to influence the witness such that the evidence was relevant for the purpose of showing consciousness of guilt; (2) the trial court did not abuse its discretion in excluding a letter that defendant sent to the witness, as the letter was hearsay and, because it was self-serving, did not satisfy the state-of-mind exception; (3) because the trial court was not clear about whether it applied a 15-year sentencing enhancement that defendant was not subject to, we remanded for clarification and, if the court applied the enhancement, for vacatur of the sentence and a new sentencing hearing.

¶ 1 Following a jury trial, defendant, Torrence DuPree, was convicted of two counts of armed robbery (720 ILCS 5/18-2(a)(1) (West 2010)) and two counts of aggravated robbery (720 ILCS 5/18-5 (West 2010)). The trial court sentenced him to 22 years in prison. Following the denial of his motion for reconsideration of his sentence, defendant timely appealed. Defendant argues: (1) where the trial court allowed into evidence the fact that defendant placed a collect call to a witness (which the witness did not accept), it was an abuse of discretion (and a due process violation) for the trial court to refuse to allow into evidence a letter written by defendant to that same witness; and (2) in sentencing defendant on his convictions of armed robbery under section 18-2(a)(1) of the Criminal Code of 1961 (the Code) (720 ILCS 5/18-2(a)(1) (West 2010)), the trial court erroneously included a 15-year sentencing enhancement (720 ILCS 5/18-2(b) (West 2010)), which is applicable to a conviction of armed robbery under only section 18-2(a)(2) of the Code (720 ILCS 5/18-2(a)(2) (West 2010)). For the reasons that follow, we affirm defendant’s convictions and remand the cause with directions.

¶ 2 I. BACKGROUND

¶ 3 A. The Charges

¶ 4 On May 19, 2010, defendant was indicted on two counts of armed robbery (720 ILCS 5/18-2(a)(1) (West 2010)), two counts of aggravated robbery (720 ILCS 5/18-5 (West 2010)), and two counts of robbery (720 ILCS 5/18-1 (West 2010)).¹ Each armed robbery count alleged that defendant committed robbery “while armed with a dangerous weapon, a firearm.” Because the indictment specifically alleged that defendant was armed with firearm, defendant could have been indicted under section 18-2(a)(2) of the Code, rather than section 18-2(a)(1). See 720 ILCS 5/18-2(a)(2) (West

¹The two robbery counts were nol-prossed on the first day of trial.

2010). A violation of section 18-2(a)(1) of the Code is a Class X felony (720 ILCS 5/18-2(b) (West 2010)), which has a sentencing range of 6 to 30 years (730 ILCS 5/5-4.5-25(a) (West 2010)). A violation of section 18-2(a)(2) of the Code is a Class X felony “for which 15 years shall be added to the term of imprisonment imposed by the court.” 720 ILCS 5/18-2(b) (West 2010). When the court asked the State at a subsequent status hearing whether there was “any enhancement on the sentence,” the State responded: “No. The armed robbery is a Class X, so it’s 6 to 30.”

¶ 5 On the first day of trial, the trial court advised defendant that he was charged with two counts of armed robbery and two counts of aggravated robbery. As to the armed robbery, the court stated:

“Armed robbery is a Class X felony which is ordinarily punishable by between six to thirty years in the Illinois Department of Corrections followed by three years of mandatory supervised release or parole; up to a \$25,000 fine. Because the indictment alleges [a] firearm, it is subject to the so-called enhancement statutes, which means any sentence you were to receive on finding of guilty for armed robbery would, whatever number you get, between six to thirty on that, I would have to add 15 years in addition. So if it’s easier to think of this way, it’s more like a minimum of 21 and a maximum of 45 years in the Department of Corrections.”

¶ 6 Defense counsel brought to the court’s attention that, while the indictment alleged that defendant was armed with a firearm, defendant had not been charged under section 18-2(a)(2) of the Code, which triggers the 15-year enhancement. At that point, the State indicated that the indictment contained a “Scrivener’s error,” and it asked for leave to amend counts I and II to show a violation of section 18-2(a)(2) rather than section 18-2(a)(1). Over defendant’s objection, the trial court allowed the State to amend the indictment.

¶ 7 B. The Court's Pretrial Ruling on the Admissibility of a Letter Written by Defendant

¶ 8 Prior to the start of trial, the State indicated that it would be putting forth evidence that defendant had placed a phone call from jail to Kiernan Collins (one of the victims and an identifying witness) three days prior to the start of trial. The court ruled that the fact that the phone call was made showed that defendant attempted to influence a witness's testimony and thus was admissible as evidence of defendant's consciousness of guilt. Later that day, defense counsel indicated that he intended to put forth evidence of a letter, purportedly written by defendant and sent to Collins, to establish an innocent intent for defendant's phone call to Collins. According to defense counsel, the contents of the four-page handwritten letter (which is in the record) did not contain any threats or show any attempt to intimidate or coerce a witness. In the letter, defendant stated, *inter alia*, that he was "an innocent man" and was "shocked to know that [Collins] [went] to court and told the State that [defendant] was the person with the gun that robbed [Collins]." Defendant wrote: "I really hope that you do the right thing and tell the truth" and "I beg that you don't do something that you'll regret in the long run." The court ruled that, while the fact of the letter was admissible, the content of the letter was inadmissible hearsay.

¶ 9 C. Relevant Testimony

¶ 10 The evidence at defendant's jury trial generally established the following. Collins testified that, on the evening of February 16, 2010, he was in the back seat of a two-door Honda Civic in the parking lot of an apartment complex, with Matt Morrison in the driver's seat, when Steven Nowell entered the car and sat in the passenger seat. Morrison was planning on selling drugs to Nowell. Morrison drove out of the parking lot to conduct the drug deal elsewhere, and, as he did so, Nowell said that he had forgotten something, so Morrison returned to the parking lot. Nowell left the car

and then returned to the car with another man following him. The man pushed Nowell into the car and pulled out a gun. The gunman asked Morrison where the “stuff” was and patted down Morrison and Collins. At some point, Nowell exited the car, while the gunman remained in the car, kneeling on the front passenger seat and pointing the gun at Collins and Morrison. Collins testified that gun was a large-caliber chrome pistol revolver. Collins further testified that the gunman was wearing a black hooded sweatshirt. The hood was over the gunman’s head and pulled down to his eyebrows. The sides of his face were covered. The gunman’s face was about a foot and a half away from Collins. After taking money from Collins and a backpack from Morrison, the gunman left.

¶ 11 According to Collins, two days after the robbery he was contacted by the police. Collins went to the police station and provided a description of the gunman. Collins described the gunman as a black male with a dark complexion, who was between the ages of 20 and 25. In addition, he stated that the gunman had a thin to average build and short hair. Collins was shown a photographic lineup containing six photos, and he circled defendant’s photo, stating that he was “seventy percent sure” that defendant was the gunman.

¶ 12 Collins further testified that the present trial was initially scheduled to start on July 26, 2010. On July 23, 2010, Collins received on his cell phone a collect phone call from the county jail. When he heard that the call was from “Torrence,” he hung up, without speaking to the caller.

¶ 13 Nowell testified that he had been charged in connection with the present offense. In exchange for a reduction in the charges, Nowell agreed to testify against defendant. Nowell testified that, on the evening of the robbery, he was at his girlfriend’s apartment with two other friends, when defendant arrived. Nowell had seen defendant earlier that day driving a black Jeep, which belonged to defendant’s cousin. Nowell had known defendant for about a year and a half. Defendant asked

Nowell if he was “getting weed from Matt.” Nowell lied and told defendant “no,” and defendant left. After defendant left, Nowell went outside to meet Morrison, with whom he had made arrangements earlier in the day to buy marijuana. Nowell entered Morrison’s car and they drove off. Collins was in the back seat. According to Nowell, his girlfriend called him and told him that he had forgotten his money. The men returned to the parking lot. Nowell went to the apartment to get his money. When he returned to the car, defendant also walked up to car. Defendant pointed a revolver at Nowell’s head and told Nowell that, if he did not go through the men’s pockets, defendant would shoot. By the time Nowell put his hands up to go through the men’s pockets, Collins and Morrison already had their money out, so defendant told Nowell to grab the men’s phones. Nowell took Morrison’s phone. At that point, Morrison attempted to leave, putting the car in reverse. Defendant threw Nowell out of the car and put the car in park. Nowell, not wanting to leave Morrison, got back into the car and took Morrison’s backpack. He handed the backpack to defendant, exited the car, and began walking to the apartment. Defendant followed Nowell. Nowell did not have keys to enter the building, so defendant got into a van and drove away. Defendant was wearing a black hooded sweatshirt with the hood pulled over his head. Nowell never looked at defendant’s face, but there was no doubt in his mind that it was defendant based on defendant’s voice. Nowell turned himself in to the police the next day. Prior to turning himself in, he received several threatening calls from defendant. Defendant told Nowell what he was going to do to him if he told on defendant. When Nowell first spoke with the police, he told them that he did not know the identity of the gunman.

¶ 14 Kenyana Whiteside testified that she was Nowell’s girlfriend and that they had a child. On the evening of February 16, 2010, she was at her apartment with Nowell. Defendant came over and asked to use her cellphone. She gave it to him and he stepped outside the door to use it. He returned

about five minutes later and gave her the phone. Nowell and defendant then left together. She went to her friend Lynda's apartment, which was about a minute away. About 15 minutes later, Lynda received a phone call and handed the phone to Whiteside. Nowell was on the phone and told Whiteside that defendant had just robbed somebody.

¶ 15 Police officer Steven Kueber testified that he interviewed Nowell. He stated that, during the first two hours of the interview, Nowell repeatedly denied that defendant was the gunman, but Nowell would hint toward a specific person who committed the robbery. For instance, Nowell gave descriptions of the person and stated that he had just gotten out of jail. Eventually, near the end of the interview, Nowell stated that defendant was the gunman. Kueber also identified an audio recording of a phone call on July 15, 2010 (and a transcript thereof) between defendant and his cousin, Leon Hudson. The call was recorded by a system at the Lake County jail and played to the jury. During the call, defendant said that he saw the person who was going to be testifying against him get out of jail in return for a deal and that Hudson should "let everybody know, man, I want his head on a platter." In another call recorded by the jail, defendant told a woman that he "called one of the white boys," "but he didn't accept the call."

¶ 16 Hudson testified for the defense. Hudson stated that defendant was five feet nine inches tall. He also testified that, although he had owned a black Jeep, it was not in his possession on the day of the incident as it had been repossessed on January 26.

¶ 17 **D. Closing Argument**

¶ 18 During closing argument, the State referred as follows to the unaccepted phone call placed by defendant to Collins:

“First, with regard to Kiernan Collins, you heard the young man came in and testify a couple days ago and he said that he got a phone call from the defendant. While the defendant was in the Lake County Jail he had the audacity to call a witness for the State three days before a trial date. Kiernan told you this case was set for trial once before on July 26th. Three days before that on July 23rd Kiernan is sitting around, his cell phone rings. It’s a call from the Lake County Jail, a call from the man who stuck a gun in his face and robbed him. Kiernan not surprisingly after getting this call on his cell phone hung up the phone immediately when he heard who it was from. It’s not really a stretch to say that the defendant was attempting to influence Kiernan. He wasn’t calling him to see what Kiernan was going to be doing that weekend. He wasn’t calling him for any other innocent reason. He was calling to influence him.”

¶ 19 The State also noted Nowell’s testimony that defendant had repeatedly called him and threatened him to keep his mouth shut and the recording of the other phone call in which defendant said that he wanted Nowell’s “head on a platter.” After reviewing all of the other testimony, the State ended by stating:

“The last thing I want to say is this. There was a common thread among the testimony of Kiernan Collins, Steven Nowell and Kenya Whiteside. The common thread is they were all terrified. You can see it when they were here on the stand. They were all terrified of him, this guy, because he used violence and threat of violence to get what he wants. After he stuck a gun in the face of these two young men and robbed them he did everything he could to escape responsibility for this

offense. He tried to influence, threaten and eliminate witnesses against him so that he would escape responsibility. Don't let him do it. Don't let him succeed."

¶ 20 E. Jury Instructions and Verdict

¶ 21 The jury was instructed on the offenses of armed robbery, aggravated robbery, and, at defendant's request, the lesser included offense of robbery. The armed robbery instruction read:

"A person commits the offense of armed robbery when he, while carrying on or about his person, or while otherwise armed with a dangerous weapon, knowingly takes property from the person or presence of another by the use of force or by threatening the imminent use of force."

¶ 22 The jury found defendant guilty of two counts of armed robbery and two counts of aggravated robbery. No findings were made concerning a firearm.

¶ 23 F. Posttrial Motion and Sentencing Hearing

¶ 24 At the hearing on defendant's posttrial motion, defense counsel argued that it was improper for the court to allow the State to amend the indictment. The court disagreed, noting that the amendment of the indictment to show a violation of section 18-2(a)(2) of the Code rather than section 18-2(a)(1) merely conformed the indictment to the statute. As to whether defendant was subject to the 15-year enhancement, the court stated that "the offense the defendant was charged, tried and convicted under has the enhancement factor in it" but that the question remained as to whether defendant was subject to it.

¶ 25 The matter proceeded to sentencing. The court asked the parties to "touch upon whether *** the 15-year enhancement applies." Both the State and defendant agreed that the 15-year

enhancement did not apply, because the jury did not make a finding on the firearm beyond a reasonable doubt. After discussing the factors in aggravation and mitigation, the court stated:

“So this brings us to the law on the 15-year issue. The Court’s aware of all the statutory factors regarding sentencing, the parameters set out in the Unified Code of Corrections including the new so-called 15/20/25 enhancements.

Being aware of all the statutory parameters and the law that applies in this case, with or without the 15 years, the Court is of the opinion that the appropriate sentence is 22 years in the Illinois Department of Corrections followed by three years of mandatory supervised release as I indicated before.”

The judgment order shows that defendant was convicted of two counts of armed robbery under section 18-2(a)(1) of the Code and that defendant was sentenced to concurrent terms of 22 years in prison.

¶ 26 G. Motion for Reconsideration of Sentence

¶ 27 Defendant moved for reconsideration of his sentence. At the hearing, defense counsel stated: “Judge, I would like to know if your Honor did impose a sentence of 7 years with an additional enhancement of 15 or not for obvious reasons because I think the enhancement does not apply to him for a number of reasons now.

* * *

And the Court really I don’t think articulated, when you did enter your sentence, whether you found it to apply or not apply or whether you were sentencing [defendant] per that enhancement or not. And I think that’s necessary.

If the enhancement does not apply, I think the 22 years was excessive[.]”

¶ 28 The court denied the motion, stating:

“At the time of sentencing, I think I said; and I hope I said; that the Court considered all the statutory and non-statutory factors in aggravation and mitigation; as well as the Constitutional command to fashion a sentence that could facilitate the defendant’s rehabilitative potential and restore him to useful citizenship.

* * *

I also considered any so-called enhancement provision regarding the additional 15 years.

And having done all of that, the Court was of the opinion that a sentence to 22 years in the Department of Corrections was appropriate. And the Court has not changed that opinion. It adheres to its prior ruling for the reasons stated.”

¶ 29 Defense counsel then inquired further: “But, Judge, did you say the enhancement does apply; or, how did you handle that situation?” And the court responded: “For the reasons stated on the record on what the sentence—that’s all I am going [to] say about it at this point.”

¶ 30 Defendant timely appealed.

¶ 31 **II. ANALYSIS**

¶ 32 **A. Admissibility of the Evidence**

¶ 33 Defendant argues that, where the State was allowed to introduce evidence that defendant placed a collect phone call from jail to Collins, the trial court abused its discretion in prohibiting defendant from introducing into evidence a letter that defendant had sent to Collins to counter the State’s theory that defendant was attempting to intimidate a witness. According to defendant, the court’s ruling denied him a fair trial. Defendant also seems to argue that it was error for the court

to admit evidence of the phone call in the first place. “A trial court’s evidentiary rulings [including] on hearsay testimony are reviewed under an abuse of discretion standard, and an abuse of discretion will be found only where the trial court’s ruling is ‘arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.’ ” *People v. Munoz*, 398 Ill. App. 3d 455, 479-80 (2010) (quoting *People v. Caffey*, 205 Ill. 2d 52, 89 (2001)). We find that the trial court did not abuse its discretion in admitting evidence of the phone call and in determining that the letter was inadmissible hearsay.

¶ 34 First, defendant maintains that the phone call “might not have been as admissible as the court below seemed to believe.” We disagree. “Relevant evidence means ‘evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.’ ” *People v. Barrow*, 133 Ill. 2d 226, 261 (1989) (quoting Fed. R. Evid. 401). “[A]n attempt to intimidate or influence a witness is relevant for the purpose of showing consciousness of guilt.” *Id.* Defendant argues that his phone call to Collins was inadmissible, because its relevance depended on the assumption that defendant was trying to intimidate Collins. In support of his argument, defendant cites *Barrow*. We find it distinguishable. In *Barrow*, the trial court admitted into evidence letters that the defendant had sent to his incarcerated brother as evidence suggesting consciousness of guilt. *Id.* The letters contained pictures drawn by the defendant showing a rat in the jaws of a skull. The rat was labeled with the name of a witness. Words and phrases such as “Paybacks,” “A Bitch,” and “F.T.W.” were written on the page. *Id.* at 260-61. There was also a picture of a man lying on his back, apparently under three to four feet of water, with the witness’s name written across his forehead. The supreme court found that the trial court abused its discretion in admitting the letters, noting that there was “no

showing that the defendant intended that the exhibits were to be seen by anyone other than his brother” and further that, because the brother was in custody, “it cannot be argued that the letters were intended as a direction to [the brother] to intimidate a witness.” *Id.* at 262.

¶ 35 Here, unlike in *Barrow*, defendant did not contact a third party; he contacted the witness directly. While no conversation took place between defendant and Collins, there was certainly an attempt made. In addition, it was reasonable to infer from the fact of the phone call that defendant was attempting to influence Collins, if not intimidate him. Thus, the evidence was admissible.

¶ 36 Defendant next argues that, because the trial court admitted into evidence defendant’s attempted phone call to Collins, the court should have also admitted into evidence the letter that defendant sent to Collins. The court found that the letter was inadmissible hearsay. While defendant makes no meaningful argument that the letter was not hearsay, he claims (without citation to relevant authority) that the letter was “arguably” not hearsay, because it was offered to show defendant’s state of mind. In any event, defendant maintains that the court’s refusal to admit the letter violated his right to present a defense. We find that the court properly denied the admission of the letter into evidence.

¶ 37 First, we find that the letter was hearsay and not subject to the state-of-mind exception. “Hearsay evidence consists of an out-of-court statement offered to prove the truth of the matter asserted and unless it falls within an exception to the hearsay rule, this type of evidence is generally inadmissible due to its lack of reliability and the inability of the opposing party to confront the declarant. [Citations.]” (Internal quotation marks omitted.) *Munoz*, 398 Ill. App. 3d at 479. “Under the state-of-mind exception to the hearsay rule, a hearsay statement may be admissible if it ‘[expresses] the declarant’s state of mind at the time of the utterance,’ *i.e.*, the declarant’s intentions,

plans or motivations at the time of the utterance.” (Emphasis omitted.) *Id.* (quoting *People v. Lawler*, 142 Ill. 2d 548, 559 (1991)). “[S]tate-of-mind utterances will be admissible only if: (1) the declarant is unavailable to testify, (2) there is a reasonable probability that the proffered hearsay statements are truthful, and (3) the statements are relevant to a material issue in the case.” *Id.*

¶ 38 We cannot say that there is a reasonable probability that the proffered hearsay statements are truthful. As our supreme court has noted, “[S]elf-serving statements or conversations between a defendant and third parties subsequent to the commission of the crime are not competent evidence.” *People v. Edwards*, 144 Ill. 2d 108, 161 (1991). “The rationale underlying this exclusion is that the credibility of the defendant is suspect and his statements are not reliable in light of the defendant’s motive to fabricate testimony favorable to his innocence.” *Id.* In the letter, defendant profusely and repeatedly proclaimed his innocence. Defendant stated that he was “shocked” that Collins had told the police that defendant had committed the crime, because defendant was an “innocent man.” Defendant told Collins that he “really hope[d] that [he would] do the right thing.” Certainly, defendant, who had written the letter from prison, had a motive to fabricate his innocence.

¶ 39 Nevertheless, defendant argues that, even if the letter were hearsay, its exclusion led to an impermissibly unfair advantage for the State. Defendant cites two cases in support: *People v. Melock*, 149 Ill. 2d 423 (1992), and *People v. Wheeler*, 151 Ill. 2d 298 (1992). Both cases are distinguishable. In *Melock*, the supreme court held that, although results of a polygraph test are inadmissible to establish the guilt or innocence of the defendant, the exclusion of evidence of the circumstances surrounding the defendant’s polygraph examination was reversible error where it was offered by the defendant on the issue of the reliability of his subsequent confession. The defendant

claimed that the examiner had falsely told him that he had failed examination, and the State relied almost exclusively on the confession to establish guilt. In reversing, the court stated:

“We believe that the exclusion of the polygraph evidence here deprived defendant of his fundamental right to a fair opportunity to present a defense. Fundamental justice requires that the defendant have every opportunity to controvert the State’s proof. Defendant has a right, regardless of how substantial or infirm the evidence against him, to familiarize the jury with every circumstance attendant to the State’s obtention of his confession. [Citation.] Thus, we hold that the polygraph evidence should have been admitted for the limited purpose of determining the credibility and reliability of the confession.” *Melock*, 149 Ill. 2d at 465.

In *Wheeler*, the supreme court held that allowing the State to present testimony of an examining expert witness that the victim suffered from rape trauma syndrome, while denying the defendant’s request to have his own expert examine the victim for any such posttraumatic stress disorder, violated the defendant’s due process rights. *Wheeler*, 151 Ill. 2d at 312-13. The court specifically noted that the evidence was “closely balanced and ultimately the case turned on the credibility of the victim and defendant. The evidence of rape trauma syndrome tended to corroborate the victim’s testimony.” *Id.* at 313. The court further explained that, where the victim exercises her right to refuse an examination by the defendant’s expert, “the State may still introduce rape trauma syndrome evidence through the opinions of nonexamining experts.” *Id.* at 312.

¶ 40 Defendant’s reliance on *Melock* and *Wheeler* is unpersuasive. The evidence that defendant was seeking to rebut here was not as critical as the evidence in those cases. In *Melock*, the State’s case relied almost exclusively on the defendant’s confession, and the defendant sought to challenge the manner in which it was obtained. Similarly, in *Wheeler*, the State’s expert’s testimony

corroborated the victim's testimony in a case that depended almost entirely on the credibility of the victim and the defendant. Here, although defendant maintains that "the call was a major part of the State's case," we do not agree. While it is true that the State argued to the jury that defendant had attempted to intimidate and threaten witnesses, in doing so the State noted Nowell's testimony that defendant had threatened Nowell before Nowell went to the police and defendant's comment that he wanted Nowell's "head on a platter." This was clearly evidence of intimidation. The fact that defendant made a phone call to Collins was only a small part of the State's larger argument concerning defendant's attempt to influence and intimidate witnesses. Further, the letter only supported the State's argument. As noted, defendant repeatedly professed his innocence and asked Collins to "do the right thing." While the letter might not have been intimidating, it certainly seemed to be an attempt to influence a witness. Thus, its exclusion did not rise to the level of the due process violations present in both *Melock* and *Wheeler*.

¶ 41

B. Sentencing

¶ 42 Finally, defendant argues that the trial court erred in considering the 15-year sentencing enhancement in imposing 22-year prison sentences. He requests that we vacate his sentences and remand for resentencing. The State agrees that defendant was not eligible for the 15-year enhancement but maintains that the trial court's 22-year sentences were otherwise based on appropriate factors.

¶ 43 First, we agree that defendant was not eligible for an enhanced sentence. The judgment order shows that defendant was convicted of armed robbery under section 18-2(a)(1) of the Code, which is armed robbery with a dangerous weapon other than a firearm. 720 ILCS 5/18-2(a)(1) (West 2010). The order is consistent with the jury's finding that defendant was guilty of armed robbery with a

dangerous weapon. Because defendant was sentenced under section 18-2(a)(1) of the Code, the sentencing enhancement did not apply. See 720 ILCS 5/18-2(b) (West 2010).

¶ 44 Next, we find that the State's argument that the trial court did not apply the enhancement is not supported by the record. Indeed, the record is entirely unclear on this issue. At a status hearing prior to trial, the State told the court that the 15-year enhancement did not apply. Later, when the court admonished defendant, it admonished him that the 15-year enhancement did apply. Although the indictment was amended to indicate that defendant was being charged under section 18-2(a)(2) of the Code, thereby bringing the enhancement into play, the jury was instructed in accordance with section 18-2(a)(1) of the Code, and it was under this section that defendant was found guilty. At the hearing on defendant's posttrial motion, the court incorrectly stated that "the offense the defendant was charged, tried and convicted under has the enhancement factor in it." Then, at sentencing, the court asked the parties to discuss whether the 15-year enhancement applied. In sentencing defendant, the court made the puzzling comment that "with or without the 15 years, the Court is of the opinion that the appropriate sentence is 22 years." Later, at the hearing on defendant's motion to reconsider his sentence, the court stated: "I also considered any so-called enhancement provision regarding the additional 15 years." When the court was expressly asked by defense counsel whether it applied the enhancement, the court simply stated: "For the reasons stated on the record on what the sentence—that's all I am going [to] say about it at this point."

¶ 45 Based on the above, it is entirely unclear whether the court applied the 15-year enhancement. Therefore, we remand the cause and order the trial court to clarify whether its 22-year sentences included the 15-year enhancement. See *People v. Glenn*, 363 Ill. App. 3d 170, 181 (2006). If the

court indicates that it erroneously included the 15-year enhancement, the court is directed to vacate the sentences and set the matter for a new sentencing hearing.

¶ 46

III. CONCLUSION

¶ 47 Accordingly, in light of the foregoing, we affirm defendant's convictions and remand the cause with directions.

¶ 48 Affirmed and remanded with directions.