

NOTICE
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2012 IL App (4th) 110286-U

Filed 8/14/12

NO. 4-11-0286

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
PERRY HAMPTON,)	No. 10CF222
Defendant-Appellant.)	
)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices Appleton and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not coerce the jurors' verdict when it instructed them to continue deliberating; trial court did not abuse its discretion in sentencing defendant to eight years in prison.

¶ 2 On January 20, 2011, defendant Perry Hampton was convicted of aggravated battery (720 ILCS 5/12-4(b)(18) (West 2010)). Defendant was sentenced on March 4, 2011, to eight years in prison. A motion to reconsider sentence was denied April 1, 2011. Defendant appeals. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On February 4, 2010, defendant was an inmate at the Champaign County jail. Inmates are required to wear armbands containing identification information. If inmates do not wear their armbands, they could lose privileges, such as receiving mail, attending visitation, and

going to recreation. Inmates are required to leave their individual cells by 8 a.m. and are not allowed access to their cells until lockdown at 10:30 p.m. At about noon, defendant's block was called for recreation, but defendant was not permitted to go, because he was not wearing his armband, which he had left in his cell.

¶ 5 Correctional Officer Pennie Allen testified she radioed Lieutenant David Smalley to ask if defendant could go in his cell to get his armband, and Smalley declined. Defendant "didn't make a fuss about it." However, at about 2 p.m., Officer Allen informed defendant he was not allowed to go to visitation because he did not have an armband. Defendant began to insist that he be allowed visitation and became angry. He banged on the window and door area and yelled that he be allowed to speak to Smalley. Smalley calmly attempted to speak to defendant, telling him that he could not go back to the cell to retrieve the armband. Defendant called Smalley a "bitch" and "motherfucker" and said he would "kick [Smalley's] ass if he opened the door." Smalley directed defendant to turn around and place his hands on his back. Defendant turned slightly and acted as if he was going to turn around and place his hands behind his back, but then reached around and grabbed Smalley by the throat with one hand. Smalley tried to remove defendant's hand from his throat. He looked like he was having difficulty breathing, was turning red, and appeared as though he was trying to speak but could not. Officer Jeffrey Ohl tried to remove defendant's hand from Smalley's throat. Officer Allen grabbed her pepper spray, placed it in defendant's face, and told him to stop. Defendant immediately dropped his hands and placed them behind his back. After the incident Smalley had a "raspy, hoarseness in his words."

¶ 6 Officer Ohl testified that Smalley commanded defendant at least three times to turn around and put his hands behind his back. When defendant did not comply, Smalley put "a

soft hand" on defendant's right shoulder. Defendant then tried to punch Smalley, his fist barely grazing Smalley's left shoulder. Officer Ohl grabbed defendant in a headlock. Defendant reached with his right hand and started choking the lieutenant. Smalley gave similar testimony. After the incident, he had severe throat pain and trouble swallowing. His symptoms persisted for 2 1/2 weeks.

¶ 7 Corey Dixon, another inmate, testified defendant did not yell, threaten, or use obscenities. Smalley stated "I am the rules" and told defendant to "get his ass back in the pod." Defendant raised his hands as if to say "I don't want trouble." Then Smalley put his hand on defendant's shoulder, on a pressure point, and Officer Ohl put defendant in a headlock. Defendant tried to catch his breath and get the men to release his neck. Defendant never put his hands on the officers. Dixon admitted a 2009 conviction for attempted theft, a 2008 conviction for burglary, and a 2006 conviction for criminal damage to property.

¶ 8 Defendant testified he had been to court on February 3, 2010, and an officer cut off his armband. He laid the armband on a shelf in his cell. He asked Officer Allen to call the lieutenant but she ignored him. He attempted to call the lieutenant by yelling and banging on the door. An inmate threw a jail rule manual under the door. Smalley responded "I am the rules and the rules say get your ass back." Defendant pleaded with Smalley for three to five minutes and said "this shit is not right." Smalley asked defendant to turn around and put his hands behind his back, but defendant kept talking. Smalley grabbed defendant's shoulder but pushed his thumb into defendant's throat. Officer Ohl put defendant in a headlock, and he could not breathe. Officer Allen put a can of "mace" in defendant's face and defendant loosened his body and stopped trying to take Officer Ohl off his neck. The trial court informed the jury of defendant's

2010 conviction for residential burglary, which could only be considered with regard to his believability.

¶ 9 The jury began deliberations at 10:53 a.m. At 11:38 a.m., it sent out a note asking for "physician written opinion," "incident report or a duty-related incident report," and "replay video number 2." The parties agreed to a replay of the video, which was done at 12:10 p.m. As to the other items, the parties agreed the jury should be told it had all the evidence in the case and should continue deliberations. At 1:13 p.m., the jury sent a second note asking for "[d]irections because we're deadlocked nine to three." At 1:45 p.m., the jury sent a third note stating "[j]ury's deliberations 11 to 1." Because the trial court was handling juvenile proceedings when the second note was sent out, it had not responded to the second note prior to receiving the third note. The court did not disclose to the attorneys the number of jurors in favor of or against conviction. The State asked the court to direct the jury to continue deliberating, while defense counsel requested the court to declare a mistrial. At 1:51 p.m., the court ordered the jury to deliberate further. At 2:20 p.m., the jury indicated it had reached a verdict.

¶ 10 The jury convicted defendant. The trial court sentenced defendant as stated.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 A. The Trial Court Did Not Coerce the Jurors' Verdict

¶ 14 The standard of review for a trial court's grant or denial of a motion for a mistrial is abuse of discretion. *People v. Foster*, 394 Ill. App. 3d 163, 166, 915 N.E.2d 448, 451 (2009). The decision to declare a mistrial lies within the discretion of the court, and a mistrial should be declared only if there is some occurrence at trial of such a character and magnitude that the party

seeking a mistrial is deprived of a fair trial. *People v. Menssen*, 263 Ill. App. 3d 946, 950, 636 N.E.2d 1101, 1104 (1994).

¶ 15 Defendant cites *People v. Andrews*, 364 Ill. App. 3d 253, 266-67, 845 N.E.2d 974, 987 (2006), for six "[f]actors to be considered in determining whether a hung jury and a mistrial should be declared." The issue in *Andrews*, however, was whether there was a manifest necessity for declaring a mistrial, over defendant's objection, in a case of jury deadlock, and whether the double jeopardy clause barred a retrial. The issue in this case is whether the trial court coerced the jurors' verdict in directing them to continue deliberating. It is improper for a trial court to communicate any message calculated to hasten a verdict. *Foster*, 394 Ill. App. 3d at 166, 915 N.E.2d at 451. The test is whether, under the circumstances, the language used by the court actually coerced or interfered with the deliberations of jurors to the prejudice of a defendant. If a court's instruction to the jury imposed such coercion, the accuracy and integrity of the verdict would then be uncertain and the defendant is entitled to a new trial. *People v. Gregory*, 184 Ill. App. 3d 676, 681-82, 686, 540 N.E.2d 854, 857, 860 (1989). Our supreme court gave an example of a proper instruction in *People v. Prim*, 53 Ill. 2d 62, 74-75, 289 N.E.2d 601, 608-09 (1972).

¶ 16 The trial court did not coerce the jury's verdict in this case. The instruction, "please continue to deliberate," was simple, neutral, and not coercive. When the instruction was given, the jury had not been deliberating long, less than three hours. And, the court noted, the jury had not been deliberating during all of that period because the jury had "several periods where there was a break because we had to bring the parties and the attorneys back in. There was a break to set up the video equipment, and there was also lunch that was served." The length of

deliberations following an instruction to continue deliberating is not alone conclusive in determining whether a verdict was coerced. *People v. Outlaw*, 388 Ill. App. 3d 1072, 1095, 904 N.E.2d 1208, 1228 (2009). It may be reversible error in Illinois for a judge to inquire into the numerical division of the jury, although there is no *per se* rule. *People v. Santiago*, 108 Ill. App. 3d 787, 806, 439 N.E.2d 984, 997 (1982). However, "where the trial court receives an *unsolicited* statement regarding the numerical division of the jurors, an order instructing the jury to continue its deliberations does not constitute error." (Emphasis in original; internal quotation marks omitted.) *Outlaw*, 388 Ill. App. 3d at 1096, 904 N.E.2d at 1229.

¶ 17 B. The Trial Court Did Not Abuse Its Discretion in Imposing Sentence

¶ 18 Defendant next contends his eight-year sentence is excessive. A trial court's decision regarding sentencing is entitled to great deference and will not be altered on appeal absent an abuse of discretion. *People v. Pearson*, 324 Ill. App. 3d 622, 628, 756 N.E.2d 438, 444 (2001). Defendant complains the trial court failed to properly consider his young age, rehabilitative potential, the support from family and friends, as well as other mitigating factors. However, the court stated it considered all factors in mitigation. Based on defendant's criminal record, the court stated defendant's "youth belies an extensive and serious criminal history." Defendant's commission of offenses while on probation "demonstrate[d] a very poor rehabilitative and learning curve." Defendant committed the current offense while he was in custody awaiting trial on a residential burglary charge, for which he was sentenced to 29 years in the Department of Corrections. The court found defendant's criminal record to be "a sad record that evinces a stunning disregard for our laws. It demonstrates no initiative to change or learn from his mistakes, or to take his life in a more positive direction." The court's eight-year

sentence was not an abuse of discretion.

¶ 19

III. CONCLUSION

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

¶ 21 Affirmed.