

No. 1-11-3492

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,) Appeal from the Circuit Court of
) Cook County, Illinois.
)
)
Plaintiff-Appellee,)
)
v.) No. 07 CR 18462
)
)
PATRICK TAYLOR,) Honorable
) Hyman I. Riebman,
Defendant-Appellant.) Judge Presiding.
)
)

JUSTICE TAYLOR delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Epstein concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's decision to exclude expert testimony on eyewitness identification did not warrant reversal where the court gave it serious consideration and correctly found that it was not sufficiently relevant. Further, the trial court did not deny defendant a fair trial by instructing the jury to continue deliberating when they inquired about the deliberation schedule. Moreover, even if the trial court improperly prevented defendant from asking a State's witness about his outstanding warrants, any error would have been harmless. Lastly, sentence enhancement statute not unconstitutionally vague where the legislature provided the same aggravating factors that generally govern the imposition of sentences.

¶ 2 Defendant Patrick Taylor appeals from a judgment of the circuit court of Cook County finding him guilty of first degree murder of Marquis Lovings and sentencing him to life imprisonment. He contends that his conviction should be reversed and this cause remanded for a new trial because the trial court erred in excluding expert testimony on the reliability of eyewitness identification, in precluding him from cross-examining a State's witness on his outstanding warrants, and in failing to directly answer certain questions by the jury. Defendant further maintains that the sentence enhancing statute on which the court relied was unconstitutionally vague, and asks this court to correct his mittimus to reflect that he was convicted of a single count of murder.

¶ 3 BACKGROUND

¶ 4 Defendant was indicted for murder in connection with the shooting death of Lovings, which occurred on August 19, 2006, in Rolling Meadows, Illinois. Prior to trial, the court held a hearing on defendant's motions to quash arrest and suppress identification testimony from witnesses who picked him out of a photo array and a lineup. The court denied the motion, rejecting his argument that police conduct was suggestive by allowing the witnesses to view defendant while he was being treated by paramedics. Also prior to trial, the court granted the State's motion *in limine* to bar testimony of defense eyewitness identification expert Dr. Daniel Wright, concluding that his proffered testimony was within the common knowledge of an ordinary lay person.

¶ 5 The parties do not dispute that in August 2006, Lovings had two places of residence: an apartment in Chicago and another one in Rolling Meadows, each of which was shared with a different roommate. It also appears undisputed that Lovings was a drug dealer, and worked part-time at his father's Popeye's Chicken franchise. At trial, the State called four witnesses to testify

about the events that transpired on the day of the incident, namely, Kevin Gholston, Veljko Bjelica, Armando Vera and Marya Klein. Vera was Lovings' roommate in Chicago, Gholston and Bjelica knew Lovings from college, and Klein was Bjelica's girlfriend.

¶ 6 The four witnesses testified consistently that on August 19, 2006, they left Lovings' Chicago apartment at about 6 pm, with plans to watch Lovings' girlfriend sing at a bar later that evening. Lovings drove Vera and Klein, while Gholston followed with Bjelica in his own car, and the group stopped at an apartment on the way so that Lovings could get his hair braided. Lovings and Gholston smoked marijuana at that apartment, while Vera, Bjelica and Klein drank beers in the parking lot for about two to three hours as they waited for Lovings. When Lovings and Gholston came out of that apartment, they received a call from another acquaintance named Michael Barraza, who wanted to go with the group to see Lovings' girlfriend sing, and arranged to meet with them at Lovings' Rolling Meadows apartment.

¶ 7 Lovings, Vera and Klein met Barraza in the parking lot and went into Lovings apartment, leaving the door half-open for Gholston and Bjelica, who had not yet arrived. About two minutes later, Lovings was in his bedroom and Vera, Klein and Barraza were in the kitchen, when two armed African American men entered the apartment and told everyone to lie down on the ground. One of the men, who Klein and Vera identified as defendant, was wearing an orange outfit. He announced that it was a robbery and threatened them with death if they looked at him or did not put their faces to the floor. Vera saw defendant kick in the door to Lovings' bedroom, heard a gun smack Lovings on the head, then saw defendant bring Lovings into the living room and force him to lie on the floor.

¶ 8 Gholston and Bjelica, who had to park further from the apartment complex, knocked on the door, and defendant answered. They both testified that they got a good look at defendant's

face, who then pointed his gun at them and knocked Bjelica down to the floor near Klein. At that point, the two armed men told Gholston to put a pillow over his head, but from time to time, Gholston tried lifting the pillow to see what was happening around him.

¶ 9 Defendant asked Lovings for the combination to the safe in his bedroom, and when it did not work, he took Lovings back to his room. He then dragged Lovings back into the dining room, and Lovings told the two intruders that they had all the cash and marijuana that they had come for, as he asked them not to kill him. Defendant then struck Lovings in the head with his gun and asked for the combination to a different safe, which was in the second bedroom. When Lovings explained that he did not have the combination to that safe, which was not his, defendant threatened to kill Klein.

¶ 10 At that point, the second intruder placed couch cushions over Bjelica's and Klein's heads. Klein stated that up until that time, she had been able to see everything, and Bjelica noted that even with the cushions, he could see defendant's feet. Vera saw orange pants and dark legs hovering over Lovings, and Gholston heard the door open and close while defendant remained in the apartment. The witnesses heard a struggle, two shots go off, and people run out of the apartment. When Vera got up, he saw Lovings bleeding on the floor and that Barraza had left the apartment, and ran outside for help. In the parking lot, he saw Barraza with a gunshot wound screaming that he had been shot. In the apartment, Klein ran to the bathroom, and Bjelica went to tend to Lovings. Gholston locked the apartment door and later left to seek help. Lovings died at the scene, and when emergency personnel arrived, Barraza and Bjelica were also taken to the hospital. Gholston, Klein, Vera and, eventually Bjelica, were questioned by police.

¶ 11 In describing defendant's appearance on the night of the incident, Vera and Klein stated that he wore a one-piece jump suit, while Bjelica described him as wearing matching orange

sweatshirt and pants. Vera testified that defendant also wore a nylon cap, Klein stated that defendant had his hair in corn rows and no cap, and Bjelica described him as having short hair.

¶ 12 Rolling Meadows detective Dan Cook testified that he showed a photo array, which did not contain defendant's photo, to Klein on August 20, 2006, and to Bjelica on August 23, 2006, neither of whom identified anyone. The detective showed Vera four photo arrays on September 7, 2006, and he also failed to make an identification. Arlington Heights detective Joseph Pinello met with Barraza on August 22, 2006, and developed a sketch of the offender, which was shown to Klein, Bjelica and Vera. While the witnesses, at that time, told the police that the sketch bore a good resemblance to the man in orange, Bjelica and Klein acknowledged at trial that the sketch did not look like defendant.

¶ 13 In October, 2006, Bjelica received a call from Lovings' brother, who provided him with the name "Black Pat" as a possible suspect, who was associated with the town of Harvey, which Bjelica passed on to Detective Cook. The detective obtained the name Patrick Taylor from the Harvey police department, and obtained his photograph. Over the following days, Bjelica, Gholston, Klein and Vera all separately viewed a photo array containing defendant's photograph and identified him as the man in orange who shot Lovings. Gholston stated that he wanted to see defendant in person to avoid making a mistake, and Barraza was shown the same photo array, but did not identify anyone. Although all the witnesses viewed the same photo array, the pictures were rearranged each time.

¶ 14 On August 6, 2007, after further investigation, Detective Cook arrested defendant at a gas station near his home. Defendant, who had suffered gunshot wounds at some point prior to his arrest, as a result of which he had a colostomy bag, was treated at a hospital for two hours before being transported to the police station. At approximately 1 pm the next day, Cook informed

defendant that he would participate in a lineup, and when defendant responded that he could not walk, he was provided with a wheelchair. When defendant was brought to the viewing room, he began lying down and trying to hide from the mirror by diverting his face, turning his chair and calling for paramedics.

¶ 15 Klein, Bjelica, Vera and Gholston came to the viewing room, one at a time, and each identified defendant as the man dressed in orange. Bjelica noticed defendant's colostomy bag, and Vera noted that he was strapped to a chair with a gauze patch on his side. Paramedics arrived at the lineup after Klein and Bjelica had already identified defendant, but before Vera and Gholston viewed him. Gholston noted that defendant was fighting with the paramedics and trying to cover his face. According to Detective Cook, Klein stated "[h]is voice, hairline and facial features, that's him." After defendant left the viewing room, five fillers were taken individually for the sequential lineup, at which time two paramedics stayed in the room and checked each of the fillers' blood pressure and heart rate. None of the witnesses identified any of the fillers.

¶ 16 With respect to how defendant Lovings' family learned that defendant was a possible suspect, the State called Kenneth Slaughter, who used to buy marijuana from Lovings, and who once sold marijuana to defendant in June 2006, but did not reveal his source. Slaughter testified that September 2006, after Lovings was killed, he saw defendant driving a new minivan to a park in Harvey, wearing nice clothes and handing out money to children in the area. A week later, Slaughter asked defendant how he had obtained the money, and defendant replied that he had to "lay a mother[expletive] down, *** a shorty from Popeyes." Believing that defendant was referring to Lovings, Slaughter contacted Lovings' brother, and later spoke with Detective Cook. Slaughter acknowledged that when he first spoke to police in August 2007, he stated that he did

not recall a conversation with defendant, but explained that, after talking to his mother, he changed his mind and told Detective Cook what he learned from defendant. Defense counsel asked Slaughter whether he had two outstanding warrants for possession of marijuana when he first spoke to police, but the trial court sustained the State's objections, and allowed the defense to ask only whether Slaughter "believe[d] he got any benefit by going to the police."

¶ 17 The weapon used in the shooting of Lovings, a Glock semiautomatic pistol with an extended clip, was later found in the home of one Arthur Patterson, who was not charged in connection with the murder. Illinois State Police Forensic firearm identification expert Fred Tomasek testified that the weapon recovered was not only used to shoot Lovings, but was also used in an unrelated shooting of former Chicago Police officer Larry Neuman. Officer Neuman testified to being shot at by a man named Marcus Gordon on April 10, 2006, who was also not charged in connection with the shooting of Lovings. In fact, Klein, Vera and Gholston viewed photos of both Patterson and Gordon, but did not identify either of them as Lovings' shooter.

¶ 18 Mandi Hornickel, an expert in the field of latent print identification, testified that after examining the fingerprints from the crime scene, she could not confirm that any of them were left by defendant.

¶ 19 It was established at the pretrial hearing that if Dr. Wright's expert testimony had been admitted, he would have testified to certain generally accepted theories of human memory. He would have noted, for instance, that, contrary to what most people think, humans perceive fragments of an event, rather than snapshots, and a witness would not pick up everything in a visual field. According to Dr. Wright, there are factors that affect how a memory is encoded, such as a person's level of attention, how emotional a situation is, how violent the incident was, the amount of lighting at the time, and the length of the event. He further explained that studies

show that jurors tend to inflate the importance of a witness' confidence in his identification, instead of considering more important factors, such as lighting, duration of the event, and degree of attention. Further, Dr. Wright stated that a person's ability to receive and encode information is affected by their psychological state, such as stress or intoxication.

¶ 20 Dr. Wright further testified to a phenomenon known as memory conformity, such that people who spoke to each other after an event had more similar memories that they would if they had not talked. Thus, he explained that the identification process can be impacted by memory conformity when there are multiple witnesses who talk to each other, and that the likelihood that witnesses to an event will talk becomes higher when they already know each other, such as the witnesses in this case. He also described a phenomenon known as unconscious transference, where a witness remembers something from a certain event, and misattributes that to a different incident. According to Dr. Wright, that phenomenon explained why an innocent suspect is may be chosen one out of six times in an unbiased lineup.

¶ 21 With respect to the identification procedures of this case, Dr. Wright stated that the police committed errors in the photo array and physical lineups. He explained that if the officer conducting the photo lineup knew the suspect, he could have unconsciously given off clues, such as pupil dilation, which the witnesses might have, also unconsciously, picked up on, when identifying the defendant. Further, he testified that the chances that a witness might pick out the wrong offender increased when the same fillers were used in all of the photo arrays, because there were, overall, fewer choices to pick from. Dr. Wright was also uncertain whether the fillers were good choices because there were only two or three who had dark skin, like defendant. He further stated the physical lineup was suggestive because it followed a photo identification, and was, therefore, merely an exercise of picking out the previously identified person. The expert

also stated that it was obvious to a lay person that defendant stood out because he was uncooperative, and that the lineup was problematic because the witnesses were told how many people would be in it.

¶ 22 Furthermore, Dr. Wright stated that the six-week delay between the crime and the identification of defendant was significant, and noted that the memory of a stranger's face tends to decline more rapidly than other forms of memory, but acknowledged that it was still possible to remember a face over time. He further explained that there are factors that influence a witness' ability to identify an offender, but admitted that those factors become less significant when multiple witnesses identify the same offender, and that he could not tell which of the witnesses had the better ability to remember faces over time. Additionally, Dr. Wright was concerned by evidence that the witnesses may have known the offender's nickname "Black Pat," which indicated that the witnesses may have known something about the offender's appearance and have an expectation at the lineup. However, he acknowledged that the witnesses had not made any identifications when they were shown photo arrays without defendant's picture, which indicates that the witnesses were not going to pick just anyone, had no expectations, or that no one close enough to the offender was in the previous array.

¶ 23 In excluding the proffered testimony of Dr. Wright, the court noted that testimony on how memory may be affected by delay in identification, the witness' stress and their opportunity to observe the offender is not the type of knowledge that is not common to the lay person, and reasoned that there was a danger that the trier of fact may put too much weight on the expert's opinion. It further stated that his testimony on the likelihood that witnesses spoke to each other goes to their credibility, not the reliability of their identification. In addition, the court noted that

whether the officer conducting the photo array gave clues to the witnesses as to whom to pick was speculative, since there was no evidence of that.

¶ 24 The jury began deliberations at about 2:10 pm, and at about 4:45 pm it sent a note asking the following: (1) "[d]o we need to finish deliberation [sic] today?;" (2) "[i]f decided today, do we deliver today;" and (3) "[h]ow late would we deliberate?" Defense counsel suggested that the court answer "no" to the first question, "yes" to the second, and explain that the court could not give a time frame to finish. The court noted that one of the jurors rode a bike and took a bus to court, but ultimately agreed with the State's suggestion to simply advise the jury to continue. At about 5:20 pm, the court sent a response stating "[p]lease continue to deliberate," and "[a]dvice the court if there are any family or transportation issues." Twenty minutes after the court sent its response, the jury delivered its verdict finding defendant guilty. The circuit court subsequently sentenced defendant to natural life imprisonment.

¶ 25

ANALYSIS

¶ 26 On appeal from his conviction, defendant now contends that the trial court improperly prevented him from presenting his complete defense when it barred the introduction of Dr. Wright's expert testimony on eyewitness identification. He maintains that, contrary to the court's conclusion, Dr. Wright's testimony on the science behind eyewitness identification was specialized knowledge outside the ken of the average juror. Defendant further claims that Dr. Wright's testimony on the effects of delay, stress, drugs and alcohol on memory, as well as post-event information, unconscious transference and issues with the identification procedures, were relevant to the reliability of the witnesses in this case, and he was prejudiced by the court's denial of his right to present a full and fair defense.

¶ 27 It is well established that an individual will be allowed to testify as an expert if his experience and qualifications afford him knowledge that is not common to lay persons and where his testimony will aid the finder of fact to reach his conclusion. *People v. Enis*, 139 Ill. 2d 264, 288 (1990). The trial court has broad discretion in determining the admissibility of expert testimony, such that a ruling will not be reversed absent an abuse of discretion. *Id.*, *People v. Allen*, 376 Ill. App. 3d 511, 522 (2007). When considering the reliability of such an expert witness, the court should balance its probative value against its prejudicial effect, as well as the necessity and relevance of the expert testimony in light of the facts of the case before it. *Enis*, 139 Ill. 2d at 290. A trial court should carefully scrutinize the proffered testimony to determine its relevance (*People v. Tisdell*, 338 Ill. App. 3d 465, 468 (2003)), and failure to conduct a meaningful inquiry to the expert's proposed testimony may be grounds for remand. (See, *e.g.*, *Allen*, 376 Ill. App. 3d at 526).

¶ 28 Defendant in this case relies on the holding of *Allen*, 376 Ill. App. 3d at 526 for his proposition that the court should have permitted him to introduce Dr. Wright's testimony. However, such reliance is misplaced. Unlike this case, the trial court in *Allen* abused its discretion in excluding the proffered eyewitness expert testimony because it failed to comply with the requirement of careful scrutiny of that type of expert testimony. *Id.* In fact, in reversing defendant's conviction and remanding the matter for a new trial, the court in *Allen* specifically stated that it was not expressing an opinion on whether the trial court should allow any part of the offer of proof to be heard by the jury. *Id.* In contrast, the trial court in this case held a lengthy hearing on the State's motion in *limine*, heard Dr. Wright's proffered testimony in its entirety, and based on case law cited by both parties, the court concluded that the expert testimony would be more prejudicial than probative and may cause the jury to place undue

weight on the expert's opinions. Thus, the trial court gave the proffered testimony the meaningful inquiry and scrutiny called for in *Allen* and *Tisdell*, and did not, therefore, abuse its discretion in excluding it.

¶ 29 Our conclusion is consistent with the findings in *People v. Aguilar*, 396 Ill. App. 3d 43 (2009); and *In re Keith C.*, 378 Ill. App. 3d 252 (2007), both of which were issued after the decision in *Allen*, and found that the trial court in those cases did not abuse their discretion in excluding expert eyewitness testimony because they gave it serious consideration as called for in *Allen*. See *Aguilar*, 396 Ill. App. 3d at 53 (Court did not improperly exclude testimony where it "gave the requisite consideration to the proposed testimony before concluding that it was not relevant and would not aid the jury); *In re Keith C.*, 378 Ill. App. 3d at 264 ("[U]nlike the trial court in *Allen*, the trial court in this case gave the proposed testimony serious consideration before it determined that it was not relevant.").

¶ 30 Moreover, reviewing the proffered testimony, we conclude that the trial court did not err in finding that such testimony should be excluded. Unlike *Allen*, 376 Ill. App. 3d at 513-14 where a single eyewitness identified defendant in person three and a half years after the incident, in this case, four witnesses independently identified the defendant less than two months after the offense, and subsequently identified him again at an in-person lineup. Under these circumstances, Dr. Wright's testimony on the effect of delay on a witness' memory was not nearly as relevant as similar testimony offered in *Allen*, and in any event, the court correctly noted that such an effect is not outside the knowledge of an average lay person. Furthermore, his testimony on memory conformity was not relevant, since the witnesses testified that they did not talk to each other about defendant's identification. As the trial court correctly noted, Dr. Wright's testimony on the likelihood that they did, in fact, talk about those events, is only relevant to the

credibility of that testimony, which could have been explored during cross-examination, rather than the reliability of their identification. Further, testimony on "transference" of a memory from one event to the next is not relevant where, as in this case, there is no evidence that the witnesses had ever seen defendant prior to the incident. See, e.g., *Keith C.*, 378 Ill. App. 3d at 262.

¶ 31 Similarly, the trial court correctly noted that Dr. Wright's testimony on the reliability of the photo array identification procedure was speculative because there is no evidence that the officer gave any unconscious clues as to who the suspect was. While Dr. Wright would have testified that the witnesses already had an idea of what the suspect would look like because Bjelica knew that the suspect's nickname was "Black Pat," the witnesses had previously described the offender to police as a dark-skinned individual shortly after the incident. While the array contained only two dark-skinned people when defendant was identified, Dr. Wright himself acknowledged that the fact that the witnesses had been shown a different array before, and did not make any identifications until they saw defendant's photo, indicated that their identification was accurate.

¶ 32 Furthermore, while jurors' misconceptions on the witnesses' confidence as an indicator of accuracy, as well as on the level of stress and the presence of a weapon, may have had some relevancy, they are not, in and of themselves, sufficient to warrant a reversal and remand where the trial court gave meaningful consideration to the expert testimony as a whole, and other factors indicate that the eyewitnesses' testimony was reliable. See *Enis*, 139 Ill. 2d at 289 (while testimony on how a witness' confidence does not relate to accuracy may be relevant to a case, that alone is insufficient to demand a new trial); *Aguilar*, 396 Ill. App. 3d at 55 (testimony on effect of stress and presence of weapons insufficient to warrant a new trial where witnesses identified defendant shortly after the incident).

¶ 33 Defendant next contends that he was denied the right to a fair and impartial jury when the trial court did not directly answer their questions and, instead, instructed them to continue deliberating. He maintains that by failing to explain to the jury that it did not have to finish deliberations that day, or giving a time frame as to how late they would have to deliberate, the court's response was coercive in nature and, as a result, the jury was not impartial.

¶ 34 While jurors are entitled to have their inquiries answered, trial courts may exercise their discretion and properly decline to answer a jury's inquiries when the instructions are readily understandable and sufficiently explain the relevant law, where further instructions would serve no purpose and may confuse the jury, where the inquiry involves a question of fact, or giving an answer would cause the court to express an opinion which would likely direct a verdict one way or another. *People v. Childs*, 159 Ill. 2d 217, 228 (1994) (citing *People v. Reid*, 136 Ill. 2d 27, 39 (1990)). Furthermore, matters relating to jury management are generally within the discretion of the trial court. *People v. Roberts*, 214 Ill. 2d 106, 121 (2005).

¶ 35 A trial court may not "hasten" a verdict by giving instructions that are intended to coerce jurors to change their views. *People v. Love*, 377 Ill. App. 3d 306, 316 (2007) (citing *People v. Boyd*, 366 Ill. App. 3d 84 (2006); *People v. Gregory*, 184 Ill. App. 3d 676 (1989)). Instead, "a court's instruction to continue deliberating should be simple, neutral, and not coercive" and should not imply that the majority view is the correct one. *Gregory*, 184 Ill. App. 3d at 681. The test in determining the propriety of the trial court's comments to the jury in this context is whether the language used by the court actually interfered with the jury's deliberations and coerced a guilty verdict. *People v. McCoy*, 405 Ill. App. 3d 269, 275 (2010) (citing *People v. Fields*, 285 Ill. App. 3d 1020, 1029 (1996)). Further, "[s]ince coercion is a highly subjective concept that does not lend itself to precise definition or testing, the reviewing court often turns

on the difficult task of ascertaining whether the challenged comments imposed such pressure on the minority jurors that it caused them to defer to the conclusions of the majority for the purpose of expediting a verdict." *Fields*, 285 Ill. App. 3d at 1029. Further, while "extremely brief" deliberations following a trial court's comments may suggest that the court coerced the jury to render its verdict, the subsequent length of deliberations is not by itself a conclusive indication of coercion. *McCoy*, 405 Ill. App. 3d at 285; *Fields*, 285 Ill. App. 3d at 1029.

¶ 36 As noted above, the jury in this case had been deliberating for approximately two and a half hours when, at 4:40 pm, it sent a note asking the court: (1) whether it needed to finish deliberating that same day; (2) whether, if they decided that day, they would also deliver the verdict that day; and (3) how late they would need to deliberate. It appears that early in the trial, the court had told the jury that the goal would be to end each day at about 5 pm, and the court was aware that one of the jurors rode a bicycle and rode a bus to court. After defense counsel noted that it was possible that some jurors made commitments relying on the court's prior estimate of how late they would work, the court sent a response, not only asking to continue deliberating at that time, but also to advise the court of "any family or transportation issues." Under those circumstances, we cannot conclude that the court's comments were coercive, or that the short deliberations that followed that comment indicates coercion, especially in light of the court's concern for possible obligations that would prevent some jurors from staying late.

¶ 37 Next, defendant contends that the trial court improperly denied him the right to cross-examine witnesses when it prevented defense counsel from asking Slaughter about his outstanding warrants. According to defendant, Slaughter's testimony was the only corroboration to the other witnesses' identification of defendant, and the court erred in denying him the opportunity to show any interest, motive or bias that Slaughter may have had to testify falsely.

¶ 38 A defendant's right to cross-examine a witness concerning bias, prejudices or ulterior motives is protected by both the United States and Illinois constitutions. *People v. Ramey*, 152 Ill. 2d 41, 67 (1992); U.S. Const. amends VI, XIV; Ill. Const., 1970, art. 1, §8 citing *Davis v. Alaska*, 415 U.S. 308 (1974). Since the exposure of "a witness' motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination," it follows that "the widest latitude should be given the defense on cross-examination when trying to establish the witness' bias or motive." *Ramey*, 152 Ill. 2d at 67. Thus,

*** [A] defendant need not show interest or motive in that any promises of leniency have, in fact, been made to the witness by the State or that any expectation of special favor exist in the mind of the witness, before cross-examining a witness as to possible bias. Further, the defense is entitled to inquire into such promises or expectations whether they are based on fact or are simply imaginary." *Id.* at 67-68 (citing *People v. Triplett*, 108 Ill. 2d 463, 475-76 (1985)).

However, evidence of bias, interest or motive may not be remote or uncertain, but instead, must give rise to the inference that the witness has something to gain or lose by his testimony.

Triplett, 108 Ill. 2d at 475-76. While the right to cross-examination is not subject to the court's discretion, the scope of such cross-examination rests within the discretion of the trial court, and its rulings will not be disturbed absent an abuse of discretion. *People v. Nutall*, 312 Ill. App. 3d 620, 627 (2000). In order for a defendant to prevail on his claim that he was denied a sufficient opportunity to cross-examine a witness at his trial, he must establish that the trial court's limitation constituted an abuse of discretion that resulted in manifest prejudice. *Id.* at 628.

¶ 39 Here, defendant contends that the trial court erred in restricting his cross-examination of Slaughter because at the time he told the police about his conversation with defendant, Slaughter

had two pending warrants, which, according to defendant, gave him a motive to curry favor with the police. The State responds that any evidence of Slaughter's warrants would be of "no value at all," and that, regardless of whether it should have been admitted, the court's ruling did not result in manifest prejudice to defendant because Slaughter's statement to the police was consistent with the statement he had made to Lovings' brother almost a year earlier, and at that time, he did not have those warrants pending against him.

¶ 40 We agree with the State. Even if the trial court abused its discretion in restricting defendant's cross-examination, any error would have been harmless. As the Supreme Court observed:

" Whether such an error is harmless in a particular case depends upon a host of factors, all readily accessible to reviewing courts. These factors include the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of the cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case." *Delaware v. Van Arsdall*, 475 U.S. 673, 686-87 (1986).

¶ 41 Slaughter's statement to the police in 2007, after the warrants were issued against him, was consistent with what he told Lovings' brother about his conversation with defendant almost a year earlier. While defendant claims that nothing corroborates Slaughter's testimony that such a conversation did, in fact, take place in 2006, that testimony is supported by Bjelica's testimony that Lovings' brother told him that "Black Pat" was a possible suspect, and by the fact that once Detective Cook received that information from Bjelica and tracked defendant down, four witnesses identified him as the offender. Furthermore, the trial court allowed defense counsel to

ask Slaughter whether a promise of leniency had been made, but he chose not to ask. Defendant also declined to ask any of the testifying police officers whether they were aware of the warrants against defendant or whether any leniency had been offered for his testimony. Thus, any inference that Slaughter may have a motive to testify falsely to the same statements that he made months before he spoke to police, is tenuous at best. Furthermore, four witnesses, who were present at the scene of the incident, identified defendant at a photo array and then, again, in a lineup. Under these circumstances, the trial court's ruling to disallow defendant to inquire Slaughter about his warrants does not warrant reversal.

¶ 42 Defendant next contends that his sentence enhancement should be stricken and this cause remanded for resentencing because the firearm enhancement statute according to which he was sentenced, namely, section 5-8-1(a)(1)(d)(iii) of the Illinois Unified Code of Corrections (Code) (730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2010)), was unconstitutionally vague. He maintains that the statute provides no objective criteria to guide the circuit court in imposing sentences within the applicable range and, therefore, encourages arbitrary and discriminatory sentencing.

¶ 43 The statute in question provides for a mandatory sentence enhancement of 25 years to natural life imprisonment attached to his sentence because the jury found that he personally discharged a firearm that resulted in Lovings' death. 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2010)). Defendant notes that the legislature has provided the same aggravating factors that generally govern the imposition of sentences, but argues that it would be improper to use the same factors to impose a base sentence of 20 to 60 years, and then again, to justify a sentence enhancement of 25 years to natural life imprisonment.

¶ 44 This court has explicitly rejected defendant's argument in *People v. Butler*, 2013 IL App (1st) 120923, ¶41-43. As the court noted, in the context of a vagueness challenge, this court

applies a two-prong test to determine if a statute complies with due process, which will be satisfied if " (1) the statute's prohibitions are sufficiently definite, when measured by common understanding and practices, to give a person of ordinary intelligence fair warning as to what conduct is prohibited; and (2) the statute provides sufficiently definite standards for law enforcement officers and triers of fact that its application does not depend merely on their private conceptions.' " *Id.* (quoting *People v. Greco*, 204 Ill.2d 400, 416 (2003)). Defendant's challenge is based on the second prong, and as this court held in *Butler*, 2913 IL App (1st) 120923, ¶41,

"Although the sentence enhancement allows for a wide range of sentences, the scope of the sentencing range is clear and definite. When the enhancement is triggered, it must be applied for no less than 25 years and up to a term of natural life. The trial court has no discretion to decide whether or not to impose the sentence enhancement. Likewise, the standards for imposing the sentence enhancement are clearly defined. The sentence enhancement must be imposed when a defendant commits first-degree murder and discharges a firearm that proximately causes great bodily harm, permanent disability, permanent disfigurement, or death. Depending on the injury caused by the firearm used by the defendant, the trial court has discretion to impose a sentence in the range of 25–years–to–life. This allows the trial court to engage in fact-based determinations based on the unique circumstances of each case. The wide range of the sentence enhancement is appropriate because it is impossible to predict every type of situation that may fall under the purview of the statute. By defining the types of injuries that trigger the sentence enhancement, the legislature has provided the trier of fact with guidelines to apply when determining what sentence to impose within

the boundaries of the statute. Therefore, the scope and standards of the 25-years-to-life sentence enhancement are not vague." *Id.*

¶ 45 With respect to the argument that the statute allows for "double enhancement" if courts rely on the same factors to enhance a sentence as it did to decide his base sentence, courts of this state have repeatedly held that " ' where the legislature has made clear an intention to enhance the penalty for a crime, even in a way which might constitute double-enhancement, this court will not overrule the legislature.' " *Id.* at 43 (citing *People v. Sharpe*, 216 Ill.2d 481, 530 (2005)).

¶ 46 Lastly, defendant contends, and the State does not dispute, that his mittimus should be corrected to reflect a single conviction of murder, rather than three counts, as it presently reflects. We agree. It is well established that where only one person has been murdered, there can be only one conviction for murder, and when multiple convictions are obtained for offenses arising from a single act, only the conviction for the most serious charge of murder will be upheld. *People v. Cardona*, 158 Ill. 2d 403, 411 (1994). Here, defendant's convictions were obtained solely from his killing of Lovings, and we order the mittimus to be amended to reflect only one conviction of murder. Ill. S. Ct. R. 615 (b)(1) (eff. Jan. 1, 1967).

¶ 47 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County, and order the mittimus to be amended to show one conviction of murder.

¶ 48 Affirmed, mittimus corrected.