

2019 IL App (1st) 160275-U

No. 1-16-0275

Order filed May 29, 2019

Third Division

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County
)	
v.)	No. 12 CR 1740
)	
MICHAEL SMITH,)	Honorable
)	Kevin M. Sheehan,
Defendant-Appellant.)	Judge, presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

ORDER

¶ 1 *Held:* Affirmed; mittimus corrected. Defendant should not have been ordered to serve consecutive sentences for three offenses when only one offense involved severe bodily injury. Mittimus is corrected to reflect concurrent terms for two offenses and to award defendant additional credit for time served in custody prior to sentencing.

¶ 2 Following a jury trial, defendant Michael Smith was convicted of the first-degree murder of Reginald Lanier (720 ILCS 5/9-1(a)(1) (West 2010)), armed robbery of Pamela Crayton while armed with a firearm (720 ILCS 5/18-2(a)(2) (West 2010)), and aggravated battery of Georgia

Fondren with a firearm (720 ILCS 5/12-3.05(e)(1) (West 2010)). The jury also found that in committing the murder, defendant personally discharged a firearm that proximately caused the death of Lanier. The trial court sentenced defendant to a total of 96 years in prison: 60 years for the murder, which included a 25-year firearm enhancement; 21 years for the armed robbery; and 15 years for the aggravated battery with a firearm. The court ordered all sentences to be served consecutively. The court credited defendant with 1125 days spent in custody prior to sentencing.

¶ 3 On appeal, defendant claims the trial court erred in ordering that both his armed robbery and aggravated battery sentences be served consecutive to his murder sentence, because the court did not make the requisite finding of severe bodily injury as to either the victim of the armed robbery or the victim of the aggravated battery. Defendant also argues that his days of presentence custody credit were not correctly calculated. The State agrees with defendant on both counts, and so do we. We thus correct the mittimus to reflect concurrent terms for two of defendant's convictions and to accurately reflect the number of days of presentence custody credit he should receive.

¶ 4 Because defendant's arguments pertain only to his sentence and not to the sufficiency of the evidence to support his convictions, we set forth only those facts that are relevant to the issues raised on appeal.

¶ 5 Defendant's convictions arose from a shooting and robbery that occurred in an Aldi grocery store at 9017 South Halsted Street in Chicago. The evidence at trial showed that shortly after 7 p.m. on November 10, 2011, defendant and Develle Bradford entered the store, killed Lanier, who was working as a security guard, and robbed the store. At the time in question, Crayton was a cashier at the store, Ryan Harshman was the assistant manager, and Fondren and

Airosted Steve Grant were customers at the store. They all testified regarding the sequence of events inside the store. The described offenses were recorded on store security cameras.

¶ 6 Crayton testified she was working at the cash register closest to the store entrance when Fondren paid at her checkout line and stood at a nearby counter bagging her groceries. After another woman passed through the checkout line, a man came to Crayton's register and paid for a grocery item. Bradford's fingerprint was recovered from that grocery item.

¶ 7 After ringing up that purchase, Crayton heard several shots being fired and dropped to the floor near her cash register station. She looked behind her and saw defendant pointing a gun in her face and demanding money. Crayton opened her cash drawer and handed him the contents, which she estimated to be \$900.

¶ 8 Crayton saw Lanier on the floor near the third cash register from the entrance. Fondren had been shot in the leg and was trying to leave the store. Crayton and the store's assistant manager, Ryan Harshman, pulled Fondren back into the store and tried to stop the bleeding from her leg.

¶ 9 Fondren testified that after going through Crayton's checkout line, she stood at the counter area bagging her purchases. She felt something in her left leg and saw it was bleeding. She said it felt like a "ping, like a needle stick." She heard two more gunshots and got out of the store by "scooting on the floor." She was helped back into the store by Harshman, who made a tourniquet for her leg. She was treated at a hospital for a gunshot wound. The bullet entered and exited her leg and left a scar.

¶ 10 Harshman testified Crayton was the only cashier working at the time of the shooting. He was working near the freezer cases when he heard gunshots. He went toward the front of the

store and saw Lanier stumbling. Defendant had his arm extended toward Lanier. Harshman saw defendant fire three or four shots. Store surveillance video of the shooting was published during his testimony, and he identified defendant in court as the gunman.

¶ 11 Grant testified that when he entered the store, he saw defendant and Lanier standing near each other. Grant went to the back of the store to shop and heard gunshots. Grant walked to the front of the store and heard Harshman say the doors should be closed and locked because the offenders had gone. Lanier was on the floor bleeding. Grant identified defendant in a photo array and lineup.

¶ 12 Also at defendant's trial, the State presented evidence of a robbery he was involved in at a different Aldi store a few weeks before the instant offenses. Derrick Hampton testified that on October 28, 2011, he was working as a security guard at Aldi near 47th Street and Ashland Avenue when defendant and a second man entered the store and brought items to a checkout lane. The second man pointed a gun at Hampton and told him not to move while defendant took Hampton's weapon and ordered him to lie on the floor. The second man took money from the cash register, and both men fled.

¶ 13 The jury found defendant guilty of the first-degree murder of Lanier and also found that in committing that offense, defendant personally discharged a firearm that proximately caused the death. The jury also found defendant guilty of the armed robbery of Crayton while armed with a firearm and the aggravated battery of Fondren with a firearm. Defendant filed a motion for a new trial, which was denied.

¶ 14 At sentencing, a victim impact statement from Lanier's wife was read. The State informed the trial court that defendant had five prior felony convictions. After setting out the

applicable sentencing ranges for defendant's three offenses, the prosecutor asserted that defendant's sentences must all be served consecutively. The prosecutor noted that the armed robbery was not a lesser-included offense of murder and "would be consecutive and it's also a different victim in the case."

¶ 15 In mitigation of defendant's sentence, defense counsel argued the sentence for armed robbery should not be served consecutive to defendant's other terms because it is "not enumerated in the statute" and because no finding of severe bodily harm was made. Referring to section 5-8-4 of the Unified Code of Corrections (730 ILCS 5/5-8-4 (West 2010)), counsel argued that the murder sentence "will be consecutive to a crime of Class 1 or higher if there is a finding of severe bodily harm[.]" Counsel asserted that the State did not seek a finding of bodily harm as to the aggravated battery count.

¶ 16 After confirming that counsel was referring to subsection 5-8-4(d), which addresses mandatory consecutive terms, the trial court stated:

"[Section 5-8-4(d)] indicates severe bodily injury must occur during the commission of the triggering offense to the victim of that offense. That's the severe bodily harm, right? So the severe bodily harm must occur to the victim of the murder according to the statute."

¶ 17 Citing *People v. Causey*, 341 Ill. App. 3d 759 (2003), the trial court found the requirement of consecutive sentences in this case was triggered by the murder of Lanier, whose death qualified as severe bodily harm. The court noted the defense's position that the "remaining offenses have to have great bodily harm."

¶ 18 Defense counsel argued that defendant committed a single act with no substantial change in the nature of the criminal objective. Counsel acknowledged Lanier's death but asserted the minimum sentence would "be enough to send [defendant] away for the rest of his life." Counsel noted that even though defendant had a criminal record, his prior convictions were not for violent crimes, and he was not the "mastermind" of the instant offenses. Counsel presented testimony from one of defendant's friends in mitigation. Defendant addressed the court in allocution, apologizing for the mistakes he had made in his life.

¶ 19 In imposing defendant's sentence, the court stated it had considered factors in aggravation and mitigation and the parties' arguments as to whether the terms should be served consecutively or concurrently. The court noted the store surveillance video had been published and the evidence was "absolutely overwhelming" and left "[n]o doubt about [defendant's] guilt."

¶ 20 After recounting the evidence, the court remarked that it would impose a sentence that was "needed to deter others from engaging in [] senseless violence." The court stated:

"It's crimes of opportunity. Let's stick up an Aldi's store, let's put people's lives in jeopardy, and if we need to execute the security guard at the front whose job is to merely make sure that there is law and order and security in that store, let's kill him so we can get out with a bag of money. That's it. That's what this is all about.

The sentence I'm about to give needs to send a message and to deter others from engaging in the senseless killing of innocent people on the streets of Chicago and in Cook County."

¶ 21 The court sentenced defendant to 60 years for the murder of Lanier, 21 years for the armed robbery of Crayton while armed with a firearm, and 15 years for the aggravated battery of

Fondren with a firearm. The court ordered all of defendant's sentences be served consecutively.

Defense counsel informed the court defendant was in custody for 1,125 days prior to sentencing.

¶ 22 Defense counsel moved for reconsideration of his sentence, arguing that not all of defendant's terms should be served consecutively. The court denied the motion.

¶ 23 On appeal, defendant first contends the trial court erred in imposing consecutive sentences for all three offenses, because the court did not make a finding of severe bodily injury as to Crayton or Fondren, the victims of the armed robbery and aggravated battery, respectively. The State concedes that, because the trial court did not make such a finding of severe bodily injury as to either of those victims, defendant's sentences for armed robbery and aggravated battery should be served consecutive to defendant's 60-year murder sentence and concurrent to each other.

¶ 24 This court reviews the issue of whether defendant's sentences are mandatorily consecutive *de novo*. *People v. Whitney*, 188 Ill. 2d 91, 97-98 (1999). The imposition of consecutive sentences is mandatory when at least one of the defendant's offenses was first-degree murder or a Class 1 or greater felony and the defendant inflicted severe bodily injury. 730 ILCS 5/5-8-4(d)(1) (West 2010). When, as here, first-degree murder is the triggering offense, the death of the murder victim can be the basis for a finding of severe bodily injury that warrants the imposition of consecutive sentences. *People v. Griffin*, 375 Ill. App. 3d 564, 573-74 (2007); *People v. Causey*, 341 Ill. App. 3d 759, 772 (2003).

¶ 25 But first-degree murder was the *only* triggering offense in this case. As both parties acknowledge on appeal, defendant's sentences for the two nontriggering offenses of armed robbery and aggravated battery should not be served consecutively to each other. Even though

Fondren sustained a gunshot wound, the trial court made no factual finding of severe bodily injury as to either offense.

¶ 26 Thus, defendant's two sentences for those offenses should be served concurrent to each other and consecutive to defendant's sentence for murder. The murder sentence is to be served prior to the sentences for the two nontriggering offenses. See *People ex rel. Senko v. Meersman*, 2012 IL 114163, ¶¶ 17, 19 (sentences for nontriggering offenses are served after sentence for triggering offense is discharged). Pursuant to our authority under Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), we order the mittimus corrected accordingly.

¶ 27 Defendant's remaining contention on appeal involves the number of days of credit he should receive for the time he spent in custody prior to sentencing. He states the mittimus incorrectly awarded him 1,125 days of credit but that he, in fact, spent 1,464 days in custody.

¶ 28 The State, citing *People v. Williams*, 239 Ill. 2d 503 (2011), responds that defendant is entitled to 1,463 days of credit because defendant's calculation of his presentence custody credit should not include the day of his sentencing. In his reply brief, defendant acknowledges the holding in *Williams* but asserts that 1,464 days is the correct figure, because one of the years during which he was held prior to trial was a leap year that included an extra day. We agree with defendant's contention and order the mittimus corrected to reflect that he spent 1,464 days in custody prior to sentencing.

¶ 29 In sum, pursuant to this court's authority under Rule 615(b)(1), the mittimus is corrected to reflect that defendant's sentences for armed robbery and aggravated battery should be served concurrent to each other and consecutive to his 60-year term for first-degree murder. The

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mittimus is further corrected to reflect that defendant spent 1,464 days in custody prior to sentencing. The judgment of the trial court is affirmed in all other respects.

¶ 30 Affirmed; mittimus corrected.