2015 IL App (1st) 113533-U

No. 1-11-3533

December 23, 2015

FIFTH DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	
v.	)	
	)	No. 07 CR 7768
GEORGIO GAINES a/k/a GIORGIO GAINES,	)	
	)	
Defendant-Appellant.	)	The Honorable
	)	Steven Goebel,
	)	Judge presiding.

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice Reyes and Justice Lampkin concurred in the judgment.

O R D E R

¶ 1 *Held*: The trial court's judgment is affirmed where (1) the automatic transfer provision of the Juvenile Court Act of 1987 is not unconstitutional, (2) the trial court did not allow autopsy photographs to be shown to the jury and, even if it did, it did not abuse its discretion in doing so and any purported error was harmless, and (3) defendant's 50-year prison sentence is not excessive.

¶ 2 Defendant, Georgio Gaines, was indicted and tried as an adult for the murders of Carlton Hamilton and George Fletcher pursuant to the automatic transfer provision of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/5-130 (West 2006)). Following trial, a jury found defendant guilty of murdering Fletcher, and the trial court sentenced him to 50 years in prison.

¶ 3 Defendant appeals, arguing (1) the automatic transfer provision of the Act is unconstitutional; (2) the trial court abused its discretion by overruling defense objections to certain autopsy photographs of the victims' bodies, wounds, and organs; and (3) defendant's 50-year prison sentence is excessive. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 Hamilton was shot to death at around 6:30 p.m. on August 9, 2006, and Fletcher was shot to death at around 1 a.m. the next day. A grand jury indicted defendant for both murders. Although he was only 15 years old at the time of the shooting, defendant was tried as an adult based on the automatic transfer provision of the Act. Frederick Smith was also indicted for Hamilton's murder, and he and defendant were tried together before separate juries.[1]

¶ 6 A. Pre-trial Proceedings

¶ 7 Prior to trial, defendant moved to dismiss his indictment, arguing that the Act's automatic transfer provision was unconstitutional under *Graham v. Florida*, 560 U.S. 48 (2010), and *Roper v. Simmons*, 543 U.S. 551 (2005). The trial court denied defendant's motion. Defendant also objected to some of the State's photographs. At a hearing, defense counsel explained that "There were photographs the State showed the jury during the first trial. There was [*sic*] several pictures of Mr. Hamilton on the ground. I thought it was just sitting watching from the gallery a little

[1] Before his trial with defendant, Smith was tried in a separate trial. According to the parties' briefs and the order issued in Smith's appeal, Smith's first trial resulted in a hung jury. See *People v. Smith*, 2014 IL App (1st) 120639-U, ¶ 1.

overbroad [*sic*]."[2] The State argued that although it had photographs that were "not pretty," its photographs were relevant to its theory of the case. Further, the State claimed that it was not "showing photographs that were overly grotesque and there are more in that case that if we would like to show we could." The court responded that it would rule on the photographs during trial but it did not "really remember seeing overly grotesque photos in this case."

¶ 8 B. Trial

¶ 9 The matter proceeded to trial, at which the parties presented the following evidence.

¶ 10 Kathy Ross testified that her fiancé, George Fletcher, had a drug problem. She learned on August 10, 2006, that George had been murdered. She also learned that her 1993 green Mercury van, which she had given Fletcher permission to drive, had been burned.

¶ 11 Spencer Williams, who was incarcerated on an armed habitual criminal conviction and had a prior burglary conviction, testified that he could recall very little about August 9, 2006. He could not recall whether Hamilton was shot and killed, nor could he remember whether he was present when Hamilton was shot and killed. Later, he testified that he did remember giving aid to Hamilton as Hamilton was lying on the ground. Hamilton was shot multiple times, and Williams was present when he passed away. Williams did not remember seeing a van pass by and did not recall how he got to the Chicago police station on August 9 or "even remember being there." He could not remember looking at pictures, saying his memory was "kind of delusional." He could not recall talking to police officers, meeting with an assistant State's Attorney (ASA), giving a statement, or testifying before the grand jury on September 6, 2006. He also could not remember viewing line-ups on September 5, 2006, or July 31, 2007. Williams recalled testifying at an October 5, 2010, hearing, but he could not remember the substance of his testimony.

[2] At the hearing, defense counsel referred to a motion in limine that he had filed; however, the parties have not directed us to that motion, and we are unable to find it in the record.

¶ 12 Williams recalled that he wrote letters to the Cook County State's Attorney's office and to some of the judges while his case was pending. He acknowledged his signature on letters in which he sought a reduced sentence or work release and threatened not to testify if he did not receive work release. Williams admitted that he did not receive a reduced sentence. He also acknowledged that it would have been beneficial to his burglary case if he told the police he had information. However, he stated that he just wanted to help clean up violent crimes in his community.

¶ 13 Several witnesses then testified regarding Smith's prior statements and testimony. Detective Kathleen Chigaros testified that she spoke to Williams on the scene shortly after Hamilton's shooting. Williams told her that he was walking northbound on Cornell from 82nd Street when he observed a green minivan approaching. As the minivan slowed down, Williams observed defendant and Smith shooting from the van. Williams also believed a third person named Winston was inside the van. Williams said he then saw Smith and defendant exit the van and approach Hamilton. He heard someone yelling, "finish him, finish him" as Smith pointed his gun and fired additional shots. Smith and defendant then drove away in the van.

¶ 14 ASA Donna Norton testified that she took a handwritten statement from Williams on September 5, 2006. The trial court admitted Williams' statement into evidence, and Norton read it for the jury. Williams said that he was walking northbound on Cornell Avenue from 82nd to 81st Street when he saw Hamilton and Barbee standing at 8130 South Cornell. He then saw a green Mercury minivan with gray trim at the bottom approach from Cornell. From about two houses away, Williams saw defendant hanging out of the front passenger window, holding a semi-automatic handgun that was either a .9-millimeter or a 40-caliber. When the minivan was parallel to Hamilton, defendant fired several shots, and Hamilton fell to the ground. As defendant

was firing, the van's door slid open and additional shots were fired from the door. Williams ran into a gangway. He stood behind a white picket fence but could still see over the fence. From behind the fence, Williams saw Smith standing over Hamilton, holding what looked like a Tech 9 handgun with a long clip. Someone in the minivan yelled, "Finish him. Finish him." Smith then fired about three shots before jumping into the minivan. The van drove away at about 5 to 10 miles per hour, and as it passed, Williams got another look at defendant and Smith.

¶ 15 The trial court admitted a transcript of Williams' September 6, 2006, grand jury testimony, and ASA Francisco Lamas read the transcript aloud. Williams' grand jury testimony was largely consistent with his handwritten statement. In addition, court reporter Etta Jones read portions of Williams' testimony from an October 5, 2010, proceeding. That testimony was substantially similar to Williams' grand jury testimony and handwritten statement.

¶ 16 Detective James Braun testified that he spoke to Williams at the Hamilton crime scene, and Williams identified Smith and defendant as the shooters. Williams also stated that he believed the third individual might have been Winston Gibbons. Williams went to the station and viewed a lineup on August 9, 2006, which included a person named Frederick Dunbar. Williams stated, "That is not the Fred I am talking about that did the shooting earlier." Shortly after the lineup, Braun compiled two photo arrays, and Williams identified Smith and defendant in those arrays. On September 5, 2006, Williams identified defendant without hesitation from a lineup. On July 31, 2007, he identified Smith in a lineup.

¶ 17 Maurice Barbee testified that he had prior convictions for possession of a stolen motor vehicle, driving under the influence of alcohol, and driving on a suspended license. At around 6:30 p.m. on August 9, 2006, Barbee was talking to Hamilton outside of Hamilton's car near 8130 South Cornell Avenue. As they were talking, Barbee noticed a green van approaching from

about 20 feet away. Smith was in the front passenger seat, aiming a machine gun with a long clip. Barbee ran to the side of a house about 40 or 50 feet away. He heard four or five shots but could not see what was happening. After the shots stopped, Barbee returned from the side of the house and saw Hamilton on the ground. Smith and another person emerged from the van. Smith was holding a gun, but Barbee could not see the second person's face or whether he was holding a gun. Barbee heard somebody in the van say, "finish him." Smith stood over Hamilton. Barbee ran back toward the backyard and heard three or four more shots. Eventually, he returned to the street and saw Hamilton on the ground, no longer breathing.

¶ 18 Barbee did not initially talk to the police. However, he eventually spoke to them on August 10, 2006, and identified Smith as the shooter. He also picked Smith out of a lineup. Detective Braun testified that Barbee was unable to identify defendant in a photo array. However, Barbee said that he had the best view of Smith.

¶ 19 Detective Kevin Scott testified that on the morning of August 10, 2006, he found a green Mercury minivan that was completely burned out in an alley at 950 East 86th Street. At trial, Barbee identified pictures of the burned up van as showing the van in which he saw Smith.

¶ 20 Pierre Macon testified that he was incarcerated at the time of trial and had been convicted of residential burglary and criminal drug conspiracy. He lived near Ralph Jones and sometimes went to his apartment. He denied ever seeing Anthony Williams (Anthony), Gibbons, Fletcher, or Smith at Jones' apartment. Macon denied going to Jones' apartment or the alley behind Jones' apartment on August 9, 2006, and denied seeing Smith, Gaines, Gibbons, or Anthony in the alley. Macon denied burning the minivan but admitted that his hands were burned on August 9 and August 10.

¶ 21 Macon testified that police "grabbed" him while he was leaving court for a misdemeanor case in January 2007 and forced him into an "interrogation room." He denied telling the detectives that he saw Anthony, Smith, and defendant in the van or that Smith offered him money to burn the van and that he burned himself in the process.

¶ 22 Macon acknowledged that an ASA took a handwritten statement from him. However, he denied making many of the statements therein. He also testified that if he did make certain statements, it was only because the police forced him to do so. He then admitted telling the ASA the following. He agreed to burn the van because he wanted money and because he was scared of Smith. Anthony drove him to 85th Street and he lit the van on fire, injuring his hand and face in the process. When he returned to Jones' apartment, he saw Fletcher, who was upset. Macon lay down for three hours because he was in pain. When he awoke, Smith, defendant, Fletcher, Jones, Gibbons, and Anthony were all in the apartment. Defendant and Gibbons each had a gun in their hand, and they went into a room and closed the door. Macon heard a conversation between Fletcher and Smith, and Fletcher left at some point.

¶ 23 Macon admitted providing the following testimony before a grand jury on January 10, 2007. When Macon went to Jones' apartment the first time, Anthony, Smith, and defendant were getting out of a green van that Fletcher owned. Anthony was driving, Smith was in the passenger seat, and defendant was in the backseat. When Macon returned to Jones' apartment at around 8 or 9 p.m., defendant, Anthony, Smith, and Gibbons were outside in the alley. Fletcher's green minivan was also in the alley. After Smith asked Macon to burn the van, Macon and Anthony drove to 84th and Ingleside, where Macon lit the van on fire. Afterward, Macon returned to Jones' apartment and fell asleep. When Macon awoke two or three hours later, Smith, defendant, Fletcher, Jones, and Gibbons were all in the apartment. Smith told Fletcher his car had stopped at

78th and Western but Smith "was going to take care of him in one hot second." Smith then told defendant and Gibbons to "take care of him" while motioning with his head toward the door. Fletcher, defendant, and Gibbons left. Defendant and Gibbons were each holding a gun. About three minutes later, Macon heard seven or eight shots. Defendant and Gibbons returned and went into Anthony's room and shut the door. Fletcher was not with them.

¶ 24 On cross-examination, Macon stated that his memory was fresher when he spoke to the detectives in September 2006. At that time, he did not mention defendant being involved in the shootings. When the detectives "grabbed him" after court on January 8, 2007, they questioned him for more than 10 hours, telling him that his September 2006 story was not good enough and that they were going to charge him with arson and Fletcher's murder. They told Macon that if he told them what they wanted to hear, he could go home. Macon maintained that he signed the written statement because of his background, the police officers' statements, and his fear of going to prison. Macon was never charged with arson or murder.

¶ 25 The trial court admitted a redacted copy of Macon's statement, and ASA Geraldine D'Souza read it aloud. According to D'Souza, Macon stated that on the afternoon of August 9, 2006, he was outside Jones' apartment when he saw Anthony driving Fletcher's van. Smith was in the passenger seat and defendant was in the backseat. Macon went to hang out with friends before returning to Jones' apartment at around 8 or 9 p.m. Upon returning, Macon saw Gibbons, defendant, Anthony, and Smith in the alley. Smith told Macon that he needed Macon to burn the van. Macon agreed to do so because he wanted the money and because he was scared of Smith.

¶ 26 Anthony then drove Fletcher's van to 85th and Ingleside, where Macon lit it on fire, burning his face and hand. When Macon and Anthony returned to Jones' apartment, Macon saw Fletcher, who was upset because his van was gone for so long. Macon lay down for awhile.

When he awoke, he saw Smith, defendant, Fletcher, Jones, Gibbons, and Anthony were all in the apartment. Smith told Fletcher "[t]he van stopped on Western, but we're going to take care of you right now." Smith then instructed defendant and Gibbons to "Go take care of him, man" while motioning to the door with his head. Fletcher departed, with defendant and Gibbons following. About three minutes later, Macon heard seven or eight gunshots. Defendant and Gibbons returned to the apartment, each holding a gun. They went into a room and closed the door. Macon asked Smith for money, and Smith said, "No you ain't getting nothing. Get out of 82nd or I'll do something to your bitch ass and your bitch ass family."

¶ 27 Detective Ambrose Resa testified that when he interviewed Macon on September 5, 2006, he noted Macon had an injury on his right hand, which appeared to be a burn, as well as discoloration on his face. During the interview, nobody threatened to charge Macon with murder, arson, or any other crimes. Detective Braun likewise testified that he spoke to Macon on September 5, 2006, and noticed burn marks on Macon's hand, arm, and face. Macon was uncooperative. When Braun spoke to Macon again on January 8, 2007, Macon provided "[m]uch more information." Braun denied threatening to charge Macon with any crime; however, he did confront Macon with information he had indicating that Macon burned the van.

¶ 28 Ralph Jones, who had a retail theft conviction, testified that he and Anthony were living at 8241 South Drexel in August 2006. At around 7:30 p.m. on August 9, Jones returned home from visiting his mom to find Fletcher inside his apartment. Fletcher and Jones had gotten high together before, but Jones did not know how Fletcher got into his living room. Fletcher appeared anxious and kept jumping up and looking out the window.

¶ 29 Jones went into the kitchen, and Macon entered through the back door at around 8 p.m. Anthony and Macon then left together. Anthony returned about 15 or 20 minutes later, and

Macon returned another 15 or 20 minutes after Anthony. Macon's hand was red and blistered and he was shaking it and blowing on it. Jones gave Macon some ice, and Macon fell asleep at the table.

¶ 30 At around 1 a.m., defendant, Smith, and Gibbons entered the apartment, and Fletcher and Smith started arguing. Jones could see that something was sticking out of Gibbons' sweatshirt and that defendant had a .9-millimeter gun. Smith said to Fletcher, "Why you worried about that raggedy ass van? I just got jacked for my money and my dope." Smith then said, "We gonna take care of you, man. We gonna take care of you. We got you, man. We gonna take care of you. We got you." Afterward, Smith said, "You all take care of him, man." Thereafter, defendant went outside, and Fletcher and Williams followed.

¶ 31 Jones heard four or five shots. Defendant and Gibbons then ran inside the apartment. Jones asked, "Why you all run back up in here after that" and defendant said, "Didn't nobody see us, man." Smith reemerged from another room and defendant said, "It's done, man." Defendant had a pistol under his sweatshirt and half of the gun was alongside his leg.

¶ 32 Jones acknowledged that he was 54 years old and that he used heroin and crack. When he spoke to detectives on August 12, 2006, he did not mention defendant. On September 21, 2006, he spoke to the detectives again while he was in jail and told them about defendant. Jones did not call the police after a neighbor told him that Fletcher was dead outside his door, as it would not have been safe for him "to be talking." The next morning, he received a call from somebody who told him Fletcher was missing, and then "it all came together."

¶ 33 Detective Braun testified that he went to Jones' residence to interview him on August 12, 2006. Jones provided very short answers and seemed to be afraid. On September 21, 2006, Braun learned that Jones was in jail. Braun picked Jones up from the jail and had a conversation with

him, during which Jones was "very forthcoming" and provided names of the people at his apartment on August 9.

¶ 34 Chicago police officers Mark Hein and Emmet McClendon testified that defendant was arrested in the rear coach house of 7934 South Escanaba on September 4, 2006. At around 11:45 p.m. that night, Sergeant Waller knocked on the door and announced his office. Hein and McClendon both saw defendant in the front window, and McClendon saw that he was holding a blue steel weapon. Somebody said, "he's got a gun." Defendant left the window, and the door opened. When the officers entered, they found defendant in the kitchen, with his hands in the air. Defendant told the officers not to shoot and said the gun was in the garbage can. McClendon detained defendant, and Hein retrieved a semi-automatic handgun from the garbage can. The gun's magazine had 11 live rounds and one in the chamber.

¶ 35 The parties stipulated to the testimony of two medical examiners who conducted autopsies on Hamilton and Fletcher. With respect to that testimony, defense counsel made the following objection outside the presence of the jury.

> "[DEFENSE COUNSEL]: There is something I wanted to say. I just want to clarify the record that I did have objections as to the publication of the photographs that came in through the evidence technicians and through the Medical Examiner's stipulation.
>
> THE COURT: You had said previously you had objections to both victims photographs, and I overruled that objection previously.
>
> [DEFENSE COUNSEL]: I just wanted to make sure that objection was made and preserved for the record."

¶ 36 The parties stipulated that if called to testify, medical examiner Tera Jones would testify that she examined Hamilton's body on August 9, 2006. She would testify that Hamilton's cause of death was multiple gunshot wounds, and the manner of death was homicide. She would identify several photographs as depicting Hamilton's gunshot wounds, Hamilton's clothing, and jacketed bullets that she found in Hamilton's neck and upper chest. The parties further stipulated that People's exhibit Nos. 174 through 188 were taken at the time of the autopsy and truly and accurately depicted the injuries to Hamilton's body and the evidence recovered as it appeared on August 10, 2006.

¶ 37 William Moore, a forensic investigator with the Chicago Police Department, processed, photographed, and filmed the Hamilton crime scene at approximately 7:30 p.m. on August 9. He recovered five .45-caliber cartridge cases and one 9-millimeter cartridge case. Forensic scientist Kurt Zielinski testified that the 9-millimeter cartridge case was fired from the gun that Hein recovered from defendant.

¶ 38 On September 22, 2006, Sergeant Wayne Ladd recovered a Masterpiece Arms, Mach 10, .45 caliber firearm about a mile and a half away from the Hamilton crime scene. The gun had an extended clip and loaded ammunition, and Ladd had heard people refer to this type of gun as a Tech 9. Forensic testing revealed that the .45-caliber fired cartridge cases recovered at the Hamilton crime scene were shot from the Masterpiece Arms. In addition, forensic testing showed that the bullets recovered from Hamilton's body came from the Masterpiece Arms.

¶ 39 Forensic investigator Carl Brasic testified that he and his partner, Mark Harvey, processed the Fletcher crime scene. Eleven fired cartridge cases were found along with fired bullets and bullet fragments. Seven of the cartridge cases were .40-caliber cartridge cases and four were .9-millimeter cartridge cases, indicating to Brasic that at least two guns were used at

the scene. Forensic testing revealed that the four .9-millimeter cases were fired from the gun recovered from defendant.

¶ 40 The parties stipulated that if called to testify, medical examiner Kendall V. Crowns would testify that he examined Fletcher's body and would testify that Fletcher's cause of death was multiple gunshot wounds, and his manner of death was homicide. Crowns would testify that he observed gunshot entrance and exit wounds on Fletcher's head, and that the wound course caused fracturing of the base of the skull, subgaleal hemorrhage in the area of the wound sites, and subarachnoid hemorrhage along the right frontal parietal lobes and left frontal lobe of the brain. He recovered a copper jacket fragment and lead bullet fragment from the brain parenchyma. Crowns would further testify that he observed gunshot wounds to Fletcher's chest, abdomen, hip, buttocks, thigh, forearm, and wrist. Crowns would testify that he recovered a medium caliber copper jacketed lead bullet in Fletcher's abdomen, a lead bullet fragment in Fletcher's thigh, a copper jacketed deformed lead bullet in Fletcher's upper chest, and a lead bullet fragment and copper jacketed fragment in Fletcher's right forearm. Crowns would identify certain photographs as depicting Fletcher's wounds and the jacket fragments and bullet fragments that Crowns recovered. The parties stipulated that People's exhibit Nos. 117 through 148 and 164 through 172 were taken at the time of the autopsy and truly and accurately depicted the injuries to Fletcher's body and the evidence recovered as it appeared on August 10, 2006.

¶ 41 Outside the presence of the jury, the State indicated it would be seeking to move its exhibits into evidence. The trial court asked defense counsel whether he had any objection to the State's exhibits. Counsel objected to the admission of the grand jury transcripts and Williams' October 5, 2010, trial testimony but stated that "[a]s to everything else, I don't have any objection

as to admissibility. I have objection as to publications." When the jury returned to the courtroom, the State indicated that "[w]ith the admission of" its exhibits, it would rest.

¶ 42 Dominique Jackson testified on behalf of defendant. On September 4, 2006, she was at her mother's home at 7934 South Escanaba with her mother, defendant, defendant's one-year-old cousin, and her mother's partner. Defendant had been living at Dominique's mother's home "[o]ff and on." At around 11:45 p.m., defendant was cooking and Dominique was washing dishes when Dominique heard a "loud banging" at the front door. The police then entered the home by kicking down the front door and entering the back door, which was cracked to let out smoke from the food. Dominique later acknowledged that she could not actually see how the police entered the front door. The officers started asking about a gun and searching the apartment. Dominique eventually told them that the gun was under the garbage bag in the kitchen. Dominique said that Gibbons brought the gun to the house a week earlier and gave it to defendant, who put it in the garbage can.

¶ 43 After the jury retired to deliberate, the parties discussed which exhibits should be sent back. Defense counsel stated as follows: "I do have problems with all the photos that I was objecting to publication in the first place—the body pictures, body pictures of the scene, and the medical examiner." The trial court stated that it would allow the photographs over counsel's objection.

¶ 44 Following deliberations, the jury found defendant guilty of murdering Fletcher but not guilty of murdering Hamilton.

¶ 45 C. Posttrial Motions and Sentencing

¶ 46 Defendant filed a motion for new trial or, in the alternative, a motion to set aside the jury verdict and enter a judgment of acquittal. He claimed, among other things, that the trial court

erred by denying his motion in *limine* and allowing the State, over pre-trial and trial objections, to publish pictures of Hamilton and Fletcher's corpses. He also asserted that the court erred by denying his motion to dismiss the indictment. At a hearing, the trial court denied defendant's motion.

¶ 47 The matter then proceeded to sentencing. Cook County Sheriff's Investigator Cody Lattiere testified that he investigates criminal activities inside the jail. On July 29, 2008, defendant and another inmate attacked Armond Williams, a high-ranking Gangster Disciple who had sent out word that he wanted defendant dead. Williams was in his late 20s or early 30s. In September 2008, defendant and Smith were involved in a fight with the leader of the Latin Folks gang. In January 2009, defendant took part in a large, orchestrated gang hit in which an officer was taken hostage and members of defendant's gang ran into rival gang members' cells and began stabbing them. Defendant was "one of the main individuals doing the majority of the stabbing." In November 2009, defendant attacked a high-ranking member of a rival gang who had put out word that he wanted defendant dead. That inmate sustained numerous lacerations and was hospitalized. In December 2010, defendant attacked another inmate. In June 2011, defendant attacked a high-ranking member of another gang.

¶ 48 Officers also found shanks in defendant's shared cell approximately six times. In January 2010, defendant cut his wrists in an attempt to be moved to Division 10, a medical division that housed patients with psychiatric problems. Lattiere said that defendant told him he was trying to get into Division 10 because drugs were "coming in over there." Other inmates were also doing the same thing. The Cook County jail categorized defendant's self-mutilation as a suicide attempt.

¶ 49 Correctional officer Louis Hovel testified that in November 2008, defendant stabbed inmate Michael McIntosh, who was approximately 32 years old, with a shank while McIntosh was handcuffed and being led back into his cell. In doing so, defendant stabbed the officer accompanying McIntosh in the face and hand. The parties stipulated that McIntosh was convicted of aggravated discharge of a firearm to a police officer, aggravated battery of a corrections officer, and escape. He also had inmate incident reports for aggravated battery, multiple incident reports of arson, and two incidents of threatening a corrections officer.

¶ 50 Illinois Department of Corrections investigator Jude Evans testified that he was assigned to investigate an escape attempt at the St. Charles juvenile facility where defendant was housed. Defendant had been walking back from the gym to his cottage when he stepped out of line. He was discovered two hours later in a garage, holding a fire extinguisher and threatening to spray or hit the officers.

¶ 51 Andrea Ruth Goon, Fletcher's cousin, read a victim impact statement written by Fletcher's brother. Michael Thomas, Fletcher's father, also read a victim impact statement that he and his wife prepared.

¶ 52 Defendant's presentence investigation report (PSI) showed that he did not attend high school. He described his childhood as "bad" due to his mother's substance abuse problem, his unstable living arrangements, and his father's absence in his life. Defendant's prior juvenile adjudications included an aggravated battery, for which his probation was terminated unsatisfactorily, and a criminal sexual assault. His pending charges included charges for armed robbery, aggravated unlawful use of a weapon, attempted first degree murder, aggravated battery, and possession of a controlled substance in a penal institution. Defendant was diagnosed with having behavior and learning disorders during grammar school, and he saw a psychiatrist

while in jail for depression. He attempted suicide in 2009 by hanging himself, and he cut his wrists in 2010 and 2011. He was prescribed psychotropic medications. Defendant admitted being affiliated with the Black Disciples since 2002.

¶ 53 Defendant filed a social history prepared by a licensed social worker. The report described defendant's home as neglectful and filled with drug abuse and violence. Defendant had approximately five siblings on his mother's side and 20 siblings on his father's side. He described his mother as a "paranoid schizophrenic" who was addicted to drugs and had a series of abusive boyfriends, with whom the children lived. His mother often left the children alone, and defendant would have to panhandle, wash windows at a gas station, or beg friends and neighbors for food. Defendant viewed Frederick Smith as a father figure and was also very afraid of him. While in jail, Smith knocked out defendant's teeth.

¶ 54 Defendant had a seizure disorder, and his mother used his disability income to buy drugs. He stopped taking his anti-seizure medicines because he hated how the drugs made him feel. Afterward, he started taking prescription pills on the street and smoking marijuana laced with embalming fluid. Defendant had extreme mental health problems in jail and had attempted suicide and was seen in the psychiatric ward many times.

¶ 55 Defendant made the following statement in allocution.

> "I'm sorry [for] what happened to George Fletcher, but I know a lot of things as a juvenile in the past and a lot of things now that I regret. I can't go back in the past now. All I can do is move forward. And I did and the State talking about I got court orders from you trying to go to school in here, but they wouldn't let me.

> In following this, the disrespect, I came to Cook County jail around real murderers and child molesters. I have to defend myself. I have to fight to eat. I'm sorry for what happened to George Fletcher."

¶ 56 The trial court sentenced defendant to 50 years in prison. The court described Fletcher's murder as a "callus [*sic*], cold blooded act, completely devoid of any mercy or compassion or any human feeling whatsoever" and noted that Fletcher was shot on a residential street. The court stated that it had thoroughly considered defendant's PSI, it had read defendant's social history report "quite carefully," and it had considered all of the factors in aggravation and mitigation. It also stated that it had listened to the witnesses' testimony at sentencing, the arguments of counsel, and defendant's statement. The court found that defendant had "completely demonstrated a lack of ability to follow the rules and societal norms and what's right and what's wrong." While the court acknowledged that defendant was only 15 when he murdered Fletcher and that he was treated poorly as a child, the court stated that "everyone, regardless, still has choices to make." The court further stated that although defendant apologized for what happened to Fletcher, defendant was "more sorry" for himself and showed a complete lack of remorse and lack of any rehabilitative potential.

¶ 57 C. Post-Sentencing Proceedings

¶ 58 Defendant filed a motion to reconsider sentence as well as a motion to declare the automatic transfer statute unconstitutional. Following a hearing, the trial court denied defendant's motions, stating it had considered defendant's young age as well as his potential for rehabilitation and the other mitigating factors. The court noted that it had found defendant had no rehabilitative potential, especially based on the testimony that defendant attacked a jail guard and another inmate with a shank.

¶ 59 This appeal followed.

¶ 60 II. ANALYSIS

¶ 61 On appeal, defendant argues that (1) the automatic transfer provision of the Act is unconstitutional; (2) the trial court abused its discretion by overruling defense objections to certain photographs of the victims' bodies, wounds, and organs; and (3) his 50-year sentence is excessive. We address defendant's arguments in turn.

¶ 62 A. The Constitutionality of the Automatic Transfer Provision

¶ 63 Defendant first challenges the constitutionality of the automatic transfer provision of the Act, which requires that a minor who is at least 15 years old and charged with certain crimes, including first degree murder, be prosecuted in adult criminal court rather than juvenile court. *People v. Patterson*, 2014 IL 115102, ¶ 91. Defendant asserts that the provision violates the eighth amendment prohibition against cruel and unusual punishment (U.S. Const., amend. VIII) as well as the due process clauses of both the United States and Illinois Constitutions (U.S. Const., amends. V, XIV; Ill. Const. 1970, art. I, § 2). In support of his assertions, defendant relies mainly on the Supreme Court's decisions in *Miller v. Alabama*, ___U.S.___, 132 S. Ct. 2455 (2012); *J.D.B. v. North Carolina*, ___U.S.___, 131 S. Ct. 2394 (2011); *Graham v. Florida*, 560 U.S. 48 (2010); and *Roper v. Simmons*, 543 U.S. 551 (2005).

¶ 64 In *Patterson*, our supreme court rejected the eighth-amendment and due-process claims defendant now makes. As to the defendant's eighth-amendment claim, the *Patterson* court concluded that the automatic transfer provision was purely procedural and not punitive. *Patterson*, 2014 IL 115102, ¶ 105. Thus, the supreme court found, the defendant's eight-amendment claim failed. *Id.* ¶ 106. The supreme court also found the automatic transfer provision did not violate the due process clauses, as the *Roper*, *Graham*, and *Miller* decisions

each involved the eighth amendment, not the due process clause, and a constitutional challenge raised under one theory cannot be supported by law based on another provision. *Id.*, ¶ 97. The court also noted that it had rejected a due-process claim similar to the defendant's in *People v. J.S.*, 103 Ill. 2d 395 (1984). *Patterson*, 2014 IL 115102, ¶¶ 93-94. The *Patterson* court found no reason to depart from its holding in *J.S.* despite the *Roper*, *Graham*, and *Miller* decisions. *Id.* ¶ 98.

¶ 65 Defendant acknowledges the decision in *Patterson* but maintains that it was wrongly decided. In support of his claim, he cites to extensive portions of the dissent. However, as an appellate court, we are bound by the *Patterson* decision. See, *e.g.*, *In re Shermaine S.*, 2015 IL App (1st) 142421, ¶ 32. In light of *Patterson*, we reject defendant's claim that the automatic transfer provision is unconstitutional.

¶ 66 B. The Photographs of The Victim's Bodies

¶ 67 Defendant next argues that the trial court abused its discretion and deprived him of a fair trial by allowing the State to show the jury certain autopsy photographs of Hamilton and Fletcher. Defendant contends that there was no question at trial that Fletcher and Hamilton died of gunshot wounds and that at least two shooters were at each crime scene; thus, he posits, the photographs were irrelevant and any slight probative value they may have had was vastly outweighed by their prejudicial nature. The State responds that the challenged photographs were never provided to the jury. In the alternative, the State argues that the court properly exercised its discretion in allowing the photographs to be shown and, regardless, any error would have been harmless.

¶ 68 Initially, we agree with the State that the record contains no indication that the photographs at issue, People's exhibit Nos. 176 to 188 and 189 to 195, actually went to the jury.

The sole mention of exhibit Nos. 176 to 188 appears in the parties' stipulation concerning Jones' testimony about her examination of Hamilton. However, the parties stipulated only that those exhibits "were taken at the time of the autopsy and truly and accurately depict the injuries to Carlton Hamilton's body and the evidence recovered as it appeared on August 10, 2006." Notably, in the rest of the parties' stipulation about Jones' testimony, any photographs that are mentioned are tied to specific external wounds or pieces of evidence. For example, the parties stipulated that Jones would testify she observed a wound in Hamilton's right lower back, and that wound was depicted in People's exhibit Nos. 112 and 113.[3] Likewise, the parties stipulated that Jones recovered a jacketed bullet from Hamilton's upper chest and that the jacketed bullet was depicted in People's exhibit No. 114. The fact that People's exhibit Nos. 176 to 188 were not tied to specific pieces of evidence but the other photographs were suggests that those exhibits were not actually given to the jury.

¶ 69 In any event, People's exhibit Nos. 176 to 188 were photographs of Hamilton's body, and defendant was found not guilty of murdering Hamilton. Notwithstanding, defendant argues that the Hamilton photographs were in the jury room and the jurors' mind when they deliberated as to defendant's guilt or innocence with respect to Fletcher's murder. However, if the jury saw the photos of Hamilton's body and nevertheless found defendant not guilty of murdering Hamilton, defendant certainly cannot show the photos led the jury to convict him of murdering Fletcher, who was not even shown in those photographs.

¶ 70 We turn then to People's exhibit Nos. 189 through 195, which are images of Fletcher. The exhibits show Fletcher's sawed-open head, his brain, and what appear to be pieces of his skull.

[3] On appeal, defendant has not challenged the admission or publication of People's exhibit Nos. 112 and 113.

Large pools of blood are visible on Fletcher's brain. In some of the photographs, fat and muscle on Fletcher's torso can be seen in the background.

¶ 71 As with the Hamilton photographs, the record contains no indication that the Fletcher photographs were ever shown to the jury. In fact, defendant has pointed to no portion of the record in which the exhibits were ever even discussed at trial. Thus, they were apparently marked as exhibits but never introduced at trial or published for the jury. In fact, the parties stipulated that other photographs—exhibit Nos. 117 through 148 and 164 through 172—were taken at the time of the autopsy and truly and accurately depicted Fletcher's injuries and the evidence recovered on August 10, 2006. However, the stipulated testimony did not mention exhibit Nos. 189 through 195.

¶ 72 While the record is silent as to whether these specific photos ever went to the jury in defendant's case, we find it notable that the ASA specifically stated that the State did not wish "the medical examiner internal body photos" to go to the Smith jury. It is a logical assumption that the State took the same position here. Furthermore, an appellant carries the burden of presenting the court with an adequate record regarding a purported error, and any doubts arising from an inadequate record will be resolved against the appellant. *People v. Urdiales*, 225 Ill. 2d 354, 419 (2007). Here, the record is inadequate to show that the challenged exhibits were sent back to the jury.

¶ 73 In any event, even if the trial court did allow the Fletcher photographs to be sent to the jury, we would find no abuse of discretion in the court's decision. The determination of whether a jury should be able to see photographs of a decedent rests within the discretion of the trial court. *People v. Chapman*, 194 Ill. 2d 186, 219 (2000). Thus, we will not overturn a court's decision to admit photographs absent an abuse of discretion. *People v. Bounds*, 171 Ill. 2d 1, 47

(1995). "Photographs of a decedent may be admitted to prove the nature and extent of injuries and the force needed to inflict them, the position, condition and location of the body, the manner and cause of death, to corroborate a defendant's confession, and to aid in understanding the testimony of a pathologist or other witness." *People v. Richardson*, 401 Ill. App. 3d 45, 52 (2010). Where they are relevant to prove facts at issue, photographs are admissible unless they are so prejudicial and likely to inflame the jury that their probative value is outweighed. *Id*. "Even gruesome or disgusting photographs may be properly admitted into evidence if they are relevant to establish any fact at issue in the case." *People v. Armstrong*, 183 Ill. 2d 130, 147 (1998).

¶ 74 To sustain defendant's first degree murder conviction, the State was required to prove, among other things, that he performed an act that caused Fletcher's death. See 720 ILCS 5/9-1(a) (West 2006). The photographs of Fletcher, depicting the injuries to his brain and body, were probative of the nature and cause of Fletcher's death, which was a valid purpose for admitting them. See *Armstrong*, 183 Ill. 2d at 147 (photographs showing the shattered pieces of a victim's skull "demonstrated the extent and severity of the injuries suffered by the victim—a valid purpose for admitting such evidence."). The exhibits also corroborated Crown's stipulated testimony regarding his findings during Fletcher's autopsy and helped the jury to understand Crown's testimony regarding the internal injuries he observed, including hemorrhaging in Fletcher's brain and fracturing at the base of his skull. See *Richardson*, 401 Ill. App. 3d at 53 (graphic autopsy photographs depicting the victim's internal injuries were relevant to illustrate a doctor's testimony regarding the extent of the victim's injuries, the manner of death, and the defendant's intent).

¶ 75 Defendant argues that the cause of the victims' death and the number of shooters was not in dispute. However, our supreme court has explicitly stated that "[w]hen a defendant in a murder trial pleads not guilty, the prosecution is allowed to prove every element of the crime charged and every relevant fact." *Chapman*, 194 Ill. 2d at 219-20. Thus, regardless of the issues defendant contested at trial, the State was entitled—and required—to present evidence proving every element of first degree murder beyond a reasonable doubt. To that end, the State could present evidence relating to whether defendant's actions caused Fletcher's death. See *People v. Starks*, 287 Ill. App. 3d 1035, 1042 (1997) (even though the defendant did not dispute the cause of death or amount of force used, the State could "still prove every element and relevant fact of the offense charged" and autopsy photographs relevant to any such fact could be admitted even if they were gruesome).

¶ 76 As they are clearly distinguishable, we are not persuaded by defendant's reliance on *People v. Garlick*, 46 Ill. App. 3d 216 (1977), or *People v. Coleman*, 116 Ill. App. 3d 28 (1983). In *Garlick*, the appellate court concluded that a photograph of the decedent's "massive head wound" could serve no purpose other than to inflame and prejudice the jury. *Garlick*, 46 Ill. App. 3d at 224. Importantly, in *Garlick*, the defendant admitted his guilt and claimed an insanity defense. *Id.* The appellate court stated that "[i]n view of the defendant's admission of this offense and his defense of insanity, this photograph was not probative of any material issue in the case." *Id.* By contrast, defendant never admitted his guilt. Thus, as previously detailed, the State was required to prove beyond a reasonable doubt every element of first degree murder, and the photographs were probative in that regard.

¶ 77 *Coleman* is also inapposite. In that case, the jury was shown a color slide depicting "the decedent's decomposing, maggot-infested, partially autopsied body," which the appellate court

agreed was "absolutely hideous." *Coleman*, 116 Ill. App. 3d at 35. While the photographs shown in defendant's case are bloody and by no means pleasant, we cannot say that they are "absolutely hideous" in light of the nature of the offense. Unlike the slide in *Coleman*, the photographs do not show Fletcher's body decomposed or infested with maggots; instead, they are standard autopsy photographs that show Fletcher's injuries shortly after his murder. Furthermore, the State's pathologist in *Coleman* testified that the slide was "of no use to him" in identifying the decedent, and the *Coleman* court stated that a photograph of an autopsied, decomposing body carried little probative value in establishing the decedent's identity. *Id.* at 36. By contrast, the Fletcher photographs were probative of the nature and extent of Fletcher's injuries, and they corroborated and illustrated Crown's stipulated testimony regarding the internal wounds he observed during his autopsy. Thus, the exhibits held greater probative value than the slide at issue in *Coleman*.

¶ 78 In sum, we cannot say that, even if the trial court allowed the photos to be shown to the jury, its decision was an abuse of discretion.

¶ 79 Finally, even assuming the trial court did err by allowing the jury to view the challenged photographs, any error was harmless such that reversal is not warranted. See *Richardson*, 401 Ill. App. 3d at 54 (an erroneous evidentiary ruling requires reversal only if it played a substantial part in the verdict). The evidence against defendant was strong. At trial, Jones testified that Fletcher was at his apartment at around 7:30 p.m. and that defendant, Smith, and Gibbons came to the apartment at around 1 a.m. Defendant had a .9-millimeter gun. Jones heard Smith say to Fletcher, "We gonna take care of you, man." Afterward, Smith said, "You all take care of him." Defendant went outside with Fletcher and Williams, Jones heard four or five shots, and then

Jones observed defendant running back inside the apartment and stating, "Didn't nobody see us, man." Defendant had a pistol and told Smith, "It's done, man."

¶ 80 Jones' testimony was corroborated by Pierre Macon's pretrial statement and grand jury testimony. In his statement, Macon said that after burning Fletcher's van, he went to Jones' apartment, fell asleep, and awoke to find defendant, Smith, Fletcher, Jones, Gibbons, and Anthony in the apartment. Smith told Fletcher "we're going to take care of you right now" and told defendant and Gibbons to "Go take care of him, man." After Fletcher, defendant, and Gibbons left the apartment, Macon heard seven or eight gunshots. Defendant and Gibbons then returned to the apartment, each holding a gun. Before a grand jury, Jones provided testimony that largely mirrored the version of events he provided in his handwritten statement. Finally, forensic testing revealed that four 9-millimeter cases found at the Fletcher crime scene were fired from the gun that police recovered from defendant. In light of the foregoing, any purported error in admitting the photographs was clearly harmless.

¶ 81 Defendant's contention that the jury would not have believed Jones or Macon if the photographs had not been published is purely speculative. Defendant points out that Jones was a crack addict and felon who did not implicate defendant until he was in jail, and Macon was a felon who was impeached on the witness stand and only mentioned defendant after his misdemeanor court appearance. Nonetheless, Jones' trial testimony and Macon's pretrial statement and grand jury testimony were largely consistent. Moreover, defendant ignores that his conviction rested not only on Jones' and Macon's testimony, but also on the forensic evidence showing that bullet cases recovered at the Fletcher crime scene were fired from the gun found during defendant's arrest.

¶ 82 In sum, even if the trial court erroneously allowed the jury to view the challenged autopsy photographs, any error was harmless.

¶ 83 C. Defendant's Sentence

¶ 84 Finally, defendant challenges his 50-year prison sentencing, arguing that it is excessive.

¶ 85 The trial court has broad discretion in imposing a sentence, and its sentencing decisions are entitled to great deference. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). The court, having had the opportunity to observe the defendant and the proceedings, is far better situated than our court to weigh such factors as a defendant's "credibility, demeanor, moral character, mentality, environment, habits, and age." *People v. Snyder*, 2011 IL 111382, ¶ 36. Accordingly, we may not alter a sentence on review absent an abuse of the trial court's discretion. *Id.* The seriousness of the crime is the most important factor to be considered in fashioning a defendant's sentence. *People v. Brazziel*, 406 Ill. App. 3d 412, 435 (2010). "A sentence will be deemed an abuse of discretion only where the sentence 'is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense.' " *Alexander*, 239 Ill. 2d at 212 (quoting *People v. Stacey*, 193 Ill. 2d 203, 210 (2000)).

¶ 86 Defendant contends his sentence is excessive because he was only 15 years old at the time of Fletcher's murder. He posits that age is a "significant factor" weighing against the imposition of a long sentence and that juveniles have greater rehabilitative potential and are particularly prone to the influence of older peers. Defendant maintains that he killed Fletcher at the behest of Smith, who was six years older than him, and he notes that it is mitigating if a defendant's criminal conduct was induced or facilitated by someone else. See 730 ILCS 5/5-5-3.1(a)(5) (West 2006). Defendant also points out that he had a troubled upbringing, with a mother addicted to drugs and an absent father.

¶ 87 We find no abuse of discretion in the trial court's sentence. Defendant's first degree murder conviction carried a possible prison term of 20 to 60 years. 730 ILCS 5/5-8-1(a)(1) (West 2006). The court sentenced him to 50 years in prison, a sentence well within the statutory range. At defendant's sentencing hearing, the trial court expressly stated that it had considered defendant's PSI, social history, and the factors in aggravation and mitigation. The court also stated it had listened to the witnesses at the sentencing hearing, the arguments of counsel, and defendant's statement. Notably, the State presented significant aggravating evidence, which revealed that defendant had prior juvenile adjudications for aggravated battery, for which his probation was terminated unsatisfactorily, and criminal sexual assault. He also had pending charges for armed robbery, aggravated unlawful use of a weapon, attempted first degree murder, aggravated battery, and possession of a controlled substance in a penal institution. Defendant had engaged in numerous acts of violence while in jail, including partaking in a large, orchestrated hit in which an officer was taken hostage, and stabbing another officer while trying to stab an inmate. He also attacked other inmates on multiple occasions, and officers found shanks in his cell approximately six different times.

¶ 88 Moreover, the trial court, who had the opportunity to observe defendant's demeanor, found that although defendant apologized for what happened to Fletcher, defendant showed a complete lack of remorse. The court described Fletcher's murder as a "cold-blooded act" that was "completely devoid of any mercy or compassion or any human feeling whatsoever."

¶ 89 We acknowledge that defendant was only 15 years old at the time of the shooting. However, although the Supreme Court has stated that minors are less morally culpable and possess a greater capacity for rehabilitation, "the Court has also stated that the Constitution does not categorically bar lengthy terms for juveniles." *People v. Decatur*, 2015 IL App (1st) 130231,

¶ 16 (citing *Miller v. Alabama*, 567 U.S. ___, ___, 132 S. Ct. 2455, 2469 (2012)). Here, the trial court acknowledged defendant's young age at both the sentencing hearing and again in denying defendant's post-sentencing motions. However, the court stated that it did not find defendant had any rehabilitative potential regardless of his age based on his criminal history and his actions in this case.

¶ 90 The trial court also considered defendant's difficult childhood. The trial court observed that defendant had a "complete lack of parenting." Further, the trial court stated it had carefully read defendant's social history, which described the extent of defendant's troubled upbringing and included defendant's statement that he viewed Smith as a father figure and was also very afraid of him. The trial court was also aware of the evidence presented in this case establishing that Smith instructed defendant to kill Fletcher. Nevertheless, the trial court found that a 50-year sentence was appropriate. Given the seriousness of defendant's crime as well as the significant aggravating evidence presented in this case and the trial court's finding that defendant completely lacked remorse, we find no abuse of discretion in the trial court's sentence.

¶ 91 III. CONCLUSION

¶ 92 For the reasons stated, we affirm the trial court's judgment.

¶ 93 Affirmed.