2015 IL App (3d) 120439-U

Order filed January 21, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit Peoria County, Illinois
Plaintiff-Appellee,	)	
	)	Appeal No. 3-12-0439
	)	Circuit No. 11-CF-171
v.	)	
	)	Honorable Stephen Kouri, Presiding
DAVANTAE JORDAN,	)	
	)	
Defendant-Appellant.	)	

JUSTICE O'BRIEN delivered the judgment of the court.
Justice Lytton and Justice Wright concurred in the judgment.

ORDER

¶ 1 *Held*: A defendant's murder and mob action conviction was affirmed because he failed to meet his burden of showing plain error in two brief closings of the courtroom, the appointment of a special prosecutor made the denial of the defendant's request for the same moot, and although the admission of one videotaped statement as impeachment and substantive evidence was error, it was harmless error due to the other credible corroborating evidence of the defendant's guilt. However, the defendant's sentence was vacated, and remanded for re-sentencing, because it appeared to be arbitrary and not based on the applicable sentencing factors.

¶ 2 Defendant Davantae Jordan was convicted by a jury of first degree murder and mob action and sentenced to terms of imprisonment of seventy-five (75) years and one (1) year concurrent, respectively. He appeals his conviction, arguing he was denied a right to a public trial when he alleges the court room was closed twice during trial; the trial court erred when it denied his motion for appointment of a special prosecutor; the trial court erred in admitting two videotaped statements; and, the trial court abused its discretion when it sentenced him to seventy-five (75) years for murder and one (1) year concurrent, respectively. We affirm in part and remand for sentencing.

¶ 3 FACTS

¶ 4 In February 2011, defendant Davantae Jordan ("Jordan") was charged with four counts of first degree murder and one count of mob action. 720 ILCS 5/9-1(a)(2) (West 2008); 720 ILCS 5/9-1(a)(3) (West 2008); 720 ILCS 5/16-1(a)(1) (West 2008); 720 ILCS 5/25-1(a)(1) (West 2008). The charges arose from a June 2010 incident in which Jordan and two co-defendants were alleged to have beaten Adrian Ortega, a Peoria resident. Jordan was alleged to have then shot and killed Adrian Ortega. Jordan was arrested on February 18, 2011, in Peoria, Illinois with two co-defendants. Jordan's trial was severed from those of his two co-defendants.

¶ 5 On April 4, 2011, Jordan's grandmother, Azzie Jenkins and his mother, Lisa Jordan met with attorney Gerald Brady about representation of Jordan. There is some question as to the length of the initial meeting and what was discussed. Azzie Jenkins and Lisa Jordan submitted notarized letters stating the discussion included the amount Brady would charge for representation of Jordan, the charges against him and information about the case including their opinions and impressions of the case. On April 8, 2011, there was a second meeting according to the two women which focused on payment options for the retainer and fees including either a voluntary wage deduction from Azzie Jenkins's employer or a loan from the credit union. Both

women also stated that Brady was taking the case because of mutual friends, the Bassfields.

¶ 6 Brady testified that the initial meeting was somewhere between fifteen minutes and one-half an hour and mostly centered on his charges of $15,000.00 for representation, his $5,000.00 retainer and how the women could get the money. Upon receipt of the $5,000.00 retainer, Brady would then go speak with Jordan. He testified both Azzie Jenkins and Lisa Jordan did not state for certain when the crime occurred nor any other information other than Jordan was seen on Western Avenue. Brady's impression was that the two women did not know much and he needed to speak to Jordan. There were additional conversations and possibly a second meeting of which Brady has no written records. To Brady's best recollection and practice, the discussion would have centered on methods of payments to retain him. Brady agreed that they had mutual acquaintances through the church, the Bassfields, and that his receptionist, Hattie Green, went to church with Azzie Jenkins.

¶ 7 Both parties agree that a cashier's check for $3,000.00 was delivered to Brady's office dated May 6, 2011. Azzie Jenkins procured the funds through a credit union loan. Brady never deposited the cashier's check. That cashier's check was returned either July 15, 2011, or July 17, 2011, (there is a signed receipt with an unclear date when the check was picked up) after Brady left a phone message for Azzie Jenkins stating he could not represent her grandson because he was going to be appointed as State's Attorney.

¶ 8 On August 1, 2011, Brady was appointed State's Attorney of Peoria County. He was assigned the case against Jordan. He testified he did not recognize the name when the case was assigned to him as he had never met Jordan.

¶ 9 There is no entry in the record showing Brady ever appeared on behalf of defendant Jordan.

¶ 10 Jordan moved for appointment of a special prosecutor. That motion was denied on

January 11, 2012. On January 18, 2012, the judge wrote an expanded order explaining his denial of the motion. On February 10, 2012, the prosecutor moved for appointment of a special prosecutor and the judge granted the appointment. On that same day Edward Parkinson was appointed special prosecutor.

¶ 11 Trial started February 21, 2012. At trial there was conflicting testimony by the witnesses and co-defendants as to who was present at the time of the shooting. The majority of the witnesses agreed that Brittany Dirst was driving the car and that Davantae Jordan, James Reed and Curtis Taylor were in the car. There is some testimony that Tomika Adams, the mother of James Reed's child, was also in the car. Darvez Shorty ("Shorty") testified he was not in the car but that Davantae Jordan came to see him the next day. Deondra Edwards, a neighbor of the victim and witness to the events that transpired that night, testified she was not sure how many black males got out of the car, nor could she identify any of the males, nor did she know which of the black males shot Adrian Ortega.

¶ 12 Brittany Dirst ("Dirst") testified first. She testified June 24, 2010, was her birthday. Dirst testified Davantae Jordan ("Jordan") and James Reed ("Reed") were passengers in her car on that date. She testified Jordan gave her directions to their destination. When they arrived, Jordan and Reed got out of the car. She heard arguing and then gunfire then Jordan and Reed ran back to the car. Dirst testified when Jordan got back in the car he said "I shot him in the head". She then testified she drove them back to Jordan's mother's house where she dropped Jordan and Reed off and she left. Dirst testified she picked up Jordan the next morning and drove him to Shorty's house. On cross she admitted that she was drunk on vodka and high on marijuana and ecstasy on June 24, 2010.

¶ 13 Tomika Adams ("Adams") testified next. Adams stated she was a passenger in the car driven by Brittany Dirst on June 24, 2010. She testified that Jordan, Reed and Curtis Taylor

("Taylor") were all passengers in the car on that date. Adams testified Jordan gave Dirst directions on where to go. When the car stopped Taylor, Reed and Jordan all got out of the car. She testified she heard muttering that may have been a conversation or argument and something that may have been a gunshot. Then Jordan, Reed and Taylor got back in the car and Dirst drove to Jordan's mom's house where they all played cards. On cross she testified she is the mother of James Reed's child, that she drank the night of June 24, 2010, and that she has a prior felony conviction for aggravated armed robbery in a case that James Reed was the co-defendant.

¶ 14 James Reed testified under a grant of immunity. 725 ILCS 5/106-2.5(b) and (c) (West 2008). The court was aware there was a videotaped statement from him prior to his testimony. Reed testified Dirst was driving the car and Adams, Taylor and Jordan were all in the car with him. Reed's testimony agreed with Dirst and Adams in that he stated Jordan gave directions on where to go. Reed then testified he got out of the car with Jordan and Taylor but that he stayed on the sidewalk. Reed further testified he saw Taylor kick Ortega and that he saw Jordan with a gun but did not see him fire the gun. Reed heard the gunshot. Jordan, Taylor and Reed then went back to the car. Reed testified he heard Jordan tell Dirst "I just shot him". On cross Reed testified he has prior felony convictions, two for aggravated robbery, two counts of aggravated battery, another felony conviction for robbery and aggravated battery, and that he is currently being held for murder in this action. On cross he also testified that he initially told police Taylor was not in the car that night then changed his statement to say Taylor was in the car.

¶ 15 Shorty testified he was not in the car on June 24, 2010. Shorty also testified he did not see Jordan that night nor the next day. He testified Dirst did not bring Jordan to see him. Beyond that, Shorty testified he did not remember anything in answer to further questioning. When Shorty was asked if he might remember what he told police if he saw the video of his statement to the police he said "Probably. I don't know." Shorty also testified he was best friends with

both the victim and James Reed. The record indicates the court said the videotaped police interview of Shorty would be admitted for impeachment purposes, not as substantive evidence, but, the jury was not in the room when that occurred.

¶ 16 The videotaped police interrogation of Shorty was edited to approximately nine minutes for the court. The audio was not very clear. In Shorty's videotaped statement he described how the murder happened according to what he was told by Jordan, and how the victim pleaded "No Vinnie, no." before he was shot.

¶ 17 Curtis Taylor ("Taylor") was offered and granted use immunity prior to testifying. Taylor initially refused to testify. The court explained that by not testifying, as was explained to Taylor a few weeks back in the trial for one of the co-defendants, he would be subject to contempt of court and up to twenty years in prison for not testifying. Taylor took the stand and testified he is the adopted cousin of Jordan. He testified Dirst was driving the car in which Reed, Adams and Jordan were passengers when he was picked up the night in question. When questioned about the car ride and the shooting he responded "I don't know", "no", or "I don't remember" to every question he was asked. When questioned if he was arrested he responded "I think I've been arrested, yeah." When questioned about his police interview he answered "no" to every question about that interview including the questions he was asked and the answers he gave. Taylor further testified he was drunk on gin and high on ecstasy before he was arrested. On cross Taylor said he was drunk and high so does not remember anything he said to the police the day he was arrested. The court found that Taylor was being evasive and allowed the police videotape of his interview in as a prior inconsistent statement.

¶ 18 The videotaped police interrogation of Taylor appears to be the police interview in its totality. Initially, on the videotape Taylor said he did not know anything, he only recognized one person from the array of photos he was shown and did not know why his name popped up.

Eventually, Taylor talked about the night in question including his participation in the beating and murder of Ortega. Taylor told the police he only kicked Ortega once in the chest and that Reed and Jordan punched and kicked Ortega. He could not remember how Ortega ended up on the ground but described how Ortega had his hands over his head saying "No, No". He proceeded to describe how Jordan put the gun to Ortega's head and shot him.

¶ 19 Jordan's sister Shyterria testified as did his sister Jamesia. His mother Lisa also testified. The detectives, a pathologist and the coroner testified as well. The trial went on longer than originally anticipated by the court and was going to go through the weekend. The court polled the jurors as to availability for Saturday, Sunday and the following Monday. Because the courtroom was packed and the court saw no other option but to poll the jurors privately about their schedules, the courtroom doors were closed. The record indicates the doors were closed specifically for the purpose of the court to ascertain juror availability over the weekend and the following Monday without the intimidation of a packed courtroom including the media.

¶ 20 The record indicates there was also a point during closing arguments where the court requested a bailiff to go outside the court doors. It appears spectators may have been going in and out of the courtroom during closing arguments because of the court's comment "[t]he next one that leaves is staying out…" The record is silent as to if anyone was kept out of the courtroom at that point in time.

¶ 21 The trial lasted several days. Following the presentation of evidence, the jury deliberated and found Jordan guilty of first degree murder and mob action. Jordan immediately made an oral motion for a new trial, arguing that the trial was not a fair trial because of conduct during the trial. Jordan also moved for a judgment notwithstanding the verdict (J.N.O.V.). The motions were heard and denied. The trial court sentenced Jordan to terms of imprisonment of seventy-five (75) years for murder and one (1) year concurrent for mob action. Jordan appeals.

¶ 22 ANALYSIS

¶ 23 Jordan argues that (1) he was denied a right to a public trial when the court barred spectators while questioning the jury about availability over the weekend and the following week and during closing arguments when the judge said "in or out" and asked a bailiff to stand by the door; (2) the trial court erred when it initially denied Jordan's request for appointment of a special prosecutor because it found no conflict when the state's attorney as private counsel never met with the Jordan and furthermore, a special prosecutor was later appointed on motion of the state's attorney; (3) the trial court erred in admitting two videotaped statements of two witnesses as impeachment by inconsistent statements; and (4) the trial judge abused his discretion in sentencing Jordan to a seventy-five year term of imprisonment.

¶ 24 Jordan argues the exclusion of the public from the courtroom twice during trial precluded him from his sixth amendment right to a public trial. The first time the courtroom was allegedly closed was immediately following a break when the court polled the jurors on their availability over the weekend and the following Monday. The second alleged closure occurred during closing arguments by the prosecutor. The defendant did not object to either closure, and did not address the issue in his post-trial motions.

¶ 25 The sixth amendment to the United States Constitution guarantees the defendant the right to a speedy and public trial. U.S. Const., amend. VI. "This guarantee is for the benefit of the accused and 'is a safeguard against any attempt to employ the courts as instruments of persecution.'" *People v. Cooper*, 365 Ill. App. 3d 278, 281 (2006) (quoting *People v. Seyler*, 144 Ill. App. 3d 250, 252 (1986)); see *Waller v. Georgia*, 467 U.S. 39 (1984). Jordan argues his rights were violated and therefore he is entitled to a new trial. A trial courtroom is a public place. *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 578 (1980). An open trial is a presumption, but explicitly enunciated rights or interests may supersede that presumption.

Waller, 467 U.S. at 45. Additionally, the Constitution does not guarantee a perfect trial, just a fair trial. *Delaware v. Van Arsdall*, 475 U.S. 673, 681 (1986). Since the defendant did not object at trial nor raise the issue in his post-trial motions, the standard of review is plain error. See *People v. Thompson*, 238 Ill. 2d 598, 613 (2010) (in plain-error review, the burden of persuasion rests with the defendant).

¶ 26 Jordan asserts there were two incidents of alleged closures. The first occurred after a break when the court wanted to ascertain juror availability over the weekend. The courtroom was not cleared, but the record indicates the door was locked. The court stated:

> "Let's put this on the record. For the record, it's been a pretty – pretty much packed courtroom throughout this trial, and during breaks everybody gets up and leaves, which everybody did this time except two people. But I've had the door locked because when I bring the jury out, I don't want them intimidated by the number of people in here, and when I ask them by their name whether – what their availability is, I'd just as soon not have all that identification going on in front of everybody, and then just as soon as we get started, I'll ask Paul or whoever, just go – I won't even ask you. I'm asking you now, just go ahead and unlock the door. In fact, Mr. Smith, you'll have to get your next witness from out there, and that's when everybody can come in."

¶ 27 Some discussion then ensued between the parties and the court, and options were discussed and discarded as alternatives to polling the jurors about their availability. The court was very clear that the purpose of not allowing additional people into the courtroom was to address the jurors "in a more private setting" about their availability. The court has a duty to protect the privacy of the jurors. *People v. James*, 304 Ill. App. 3d 52 (1999). Nowhere in the record does it indicate that the court made anyone leave the courtroom. Specifically the court pointed out there were people in the courtroom who chose not to leave during break.

¶ 28 For the foregoing reasons, Jordan has failed to meet his burden of showing that his sixth amendment rights were violated when the courtroom was not opened after break for the court to

question jurors on their availability, although this court believes the alleged closure was unnecessary.

¶ 29 Jordan also argues his sixth amendment rights were violated when spectators were barred during closing arguments. While there is no indication in the record that spectators were actually barred, the record states that the court said:

> "You folks in or out. In or out. The next one that leaves is staying out whether it's – whatever place you're sitting, in or out. So Dave or Ken, if we could get a bailiff out there, I don't want anybody else coming in."

¶ 30 This was not a closure as the doors were not locked and there is no evidence that spectators were barred from entering or leaving the court room. As in *Cooper*, it is unfortunate that the court was exposed to disruptive behavior that detracted from the trial. *People v. Cooper*, 365 Ill. App. 3d 278, 284 (2006). The court has a duty to maintain decorum in the courtroom and disruptive spectators can be barred. *Cooper*, 365 Ill. App. 3d at 284. As in ***Cooper***, there may have been a better way to handle the situation, but the information contained in the record is adequate to support a closing. *Id*. 284. It is very important to note that the record does not indicate that a closing did occur and based on that, there is no plain error.

¶ 31 Jordan's speculation that the media was likely barred from the courtroom has no basis in fact, it is pure speculation. Nowhere in the record is there any testimony or conversation with the court that indicates media was not allowed in the courtroom. For the forgoing reasons Jordan failed to meet his burden of proof and was not denied a right to a public trial when the judge requested spectators to stay "in or out" of the courtroom.

¶ 32 Jordan next argues that he was prosecuted by a man his family paid to represent him and thus a conflict of interest occurred. It must first be pointed out that that Jordan failed to preserve the claim for review when the issue was not raised in a post-trial motion. *People v. Lang*, 346 Ill. App. 3d 677, 680 (2004) (citing *People v. Enoch*, 122 Ill. 2d 176, 187 (1988). Jordan claims

the issue of his motion to appoint a special prosecutor was argued after trial and cites to the record. That portion of the record referred to by Jordan is his argument about members of the state's attorney's office being present during trial, not the denial of his motion for appointment of a special prosecutor. Jordan argues that because members of the state's attorney's office were in the courtroom, those members were still prosecuting the case. The court found the members of the state's attorney's office present in the courtroom during trial were not prosecuting the case.

¶ 33 The court did appoint a special prosecutor on a motion by the state's attorney's office shortly after the Jordan's motion was denied. The appointment of the special prosecutor renders this particular issue on appeal moot. The Illinois Supreme Court has consistently held that "[a]n appeal is moot when it involves no actual controversy or the reviewing court cannot grant the complaining party effectual relief." *Steinbrecher v. Steinbrecher*, 197 Ill. 2d 514, 522–23 (2001). This issue is moot because of the appointment of a special prosecutor shortly after the denial of the Jordan's motion for the same.

¶ 34 Jordan next argues that the admission of the videotaped statements by Taylor and Shorty did not affirmatively damage the state's case and therefore were improper impeachment. The Illinois Code of Criminal Procedure (the Code) allows for admission of prior inconsistent statement. 725 ILCS 5/115-10.1 (West 2008).

> "Admissibility of Prior Inconsistent Statements. In all criminal cases, evidence of a statement made by a witness is not made inadmissible by the hearsay rule if
>
> (a) the statement is inconsistent with his testimony at the hearing or trial, and
>
> (b) the witness is subject to cross-examination concerning the statement, and
>
> (c) the statement--
>
> (1) was made under oath at a trial, hearing, or other proceeding, or
>
> (2) narrates, describes, or explains an event or condition of which the witness had personal knowledge, and
>
> (A) the statement is proved to have been written or signed by the

> witness, or
> (B) the witness acknowledged under oath the making of the statement either in his testimony at the hearing or trial in which the admission into evidence of the prior statement is being sought, or at a trial, hearing, or other proceeding, or
> (C) the statement is proved to have been accurately recorded by a tape recorder, videotape recording, or any other similar electronic means of sound recording.
> Nothing in this Section shall render a prior inconsistent statement inadmissible for purposes of impeachment because such statement was not recorded or otherwise fails to meet the criteria set forth herein." 725 ILCS 5/115-10.1 (West 2008).

¶ 35 Prior inconsistent statements may be admitted to impeach the credibility of a testifying witness. *People v. McCarter,* 385 Ill. App. 3d 919, 932 (2008). However, hearsay, defined as "an out-of-court statement * * * offered to prove the truth of the matter asserted," is inadmissible at trial. *People v. Gonzalez,* 379 Ill. App. 3d 941 (2008). Personal knowledge is an exception to the hearsay rule for prior inconsistent statements of a testifying witness, which may be admitted to impeach the witness's credibility. *McCarter,* 385 Ill. App. 3d at 932.

¶ 36 For an out of court statement to be admitted as an exception to hearsay, the witness must have personal knowledge of the event beyond hearing about it afterwards. *McCarter*, 385 Ill. App. 3d at 930 (citing *People v. Morgason*, 311 Ill. App. 3d 1005, 1011 (2000)). Taylor testified he could not remember much of what happened the night Ortega was shot, including who shot him. He also testified he was high and drunk when he was arrested and did not know he was being videotaped. On cross Taylor was asked only two questions to which he stated he was high and drunk and didn't remember anything.

¶ 37 According to his videotaped statement, Taylor was at the scene of the execution of Ortega and participated in the beating Ortega received prior to the gunshot. Taylor was an eyewitness and participant in the murder; therefore, his out-of-court statements were admissible as both impeachment and substantive evidence, and any consideration of such by the jury was

not error.

¶ 38 Shorty testified that he did not recall his prior statements regarding the information he was told by Jordan, and the State argued that his statements should be admitted under section 115–10.1 of the Code. 725 ILCS 5/115–10.1 (West 2008). Shorty does not have the personal knowledge required to be considered admissible under section 115-10.1(c)(2). 725 ILCS 5/115–10.1 (West 2008). The requirement of personal knowledge is to guarantee credibility by "giving defendants a meaningful opportunity for cross-examination." *McCarter,* 385 Ill. App. 3d at 930. A witness who "merely narrat[es] a third-party statement about which the witness has no personal knowledge, cross-examination gives the jury no insight into the truth of that statement, making it more difficult to judge its reliability." *McCarter,* 385 Ill. App. 3d at 931. The only reason for a party to introduce a prior inconsistent statement in this circumstance "is to get it before the jury as substantive evidence." *McCarter,* 385 Ill. App. 3d at 933.

¶ 39 Here, prior to viewing the police interview of Shorty, the court stated it was for impeachment purposes only. The jury was not present when the court made the statement and was never instructed to consider Shorty's videotaped statement for the purposes of impeachment only. During closing arguments the prosecution argued Shorty's videotaped statement as substantive evidence. The prosecution stated Jordan told Shorty he "pulled the pistol out of his – and said he shot him. He said 'I had to do it. I had to shoot him.'" Shorty did not testify to those statements. When Shorty testified, he said he could not remember or he did not know the events leading up to and including the shooting. None of the witnesses put Shorty at the scene of the shooting. The record shows the jury considered Shorty's videotaped statement as substantive evidence. Shorty's statement is not admissible as either impeachment evidence or substantive evidence. *People v. Thomas*, 178 Ill. 2d 215, 234 (1997) quoting *People v. Cooper*, 188 Ill. App.

3d 971, 973. We find the introduction of Shorty's statement constitutes error.

¶ 40 We now turn to the question of whether this error constitutes reversible error. An error is harmless if "the result would have been the same absent the error." *People v. Melchor*, 376 Ill. App. 3d 444, 457 (1st Dist. 2007) quoting *People v. Nitz*, 219 Ill. 2d 400, 410 (2006). The record in the instant case demonstrates the result would have been the same without the erroneous introduction of Shorty's statement because of the other credible, corroborating evidence of Jordan's guilt beyond Shorty's videotaped statement. Dirst testified she heard a gunshot and then Reed and Jordan ran back to the car she was driving. Dirst testified Jordan told her "I shot him" as soon as he entered the car immediately following the gunshots. Adams testified she heard gunfire while sitting in the car with Dirst. Reed testified he saw Jordan with a gun. He testified Ortega was down on the ground. He further testified he saw Jordan pointing a gun at Ortega while standing over him and heard a gunshot. After the gunshot, he (Reed), Taylor and Jordan ran back to the car Dirst was driving. Reed testified to overhearing Jordan tell Dirst "I just shot him". Reed also testified he was not high nor had he been drinking prior to the shooting. While Taylor testified he could not remember the events of the night in question, in his videotaped statement to the police he told the police officers that Jordan had a gun and used that gun to shoot Ortega.

¶ 41 We reject the defendant's assertion that the witnesses' police records and inebriation made their testimony unreliable. Dirst testified she was drunk and high on the date of the shooting because it was her birthday. Adams is a convicted felon and so is Reed. Taylor is a co-defendant for this crime along with Reed. While the testifying witness may not be deemed the most credible, the jury is charged with weighing their testimony and credibility. The credibility of the witnesses is determined by the trial court, as well as interpreting the evidence presented

and make determinations for any factual disputes that arise from inconsistent or contradictory testimony. *People v. Smith*, 278 Ill. App. 3d 343, 355 (1996). The evidence of Jordan's guilt, as presented by the testimony of these witnesses, was overwhelming and as such the error committed by the admission of Shorty's video-taped statement is harmless.

¶ 42 The final issue on appeal is the term of the sentencing. Sentencing is reviewed under the standard of abuse of discretion. *People v. McMann*, 305 Ill. App. 3d 410, 414 (1999). Unless a sentence "violates the spirit of the law" or far outweighs the offense, it will not be overturned. *McMann*, 305 Ill. App. At 414. The conviction of Jordan stands, but the sentencing appears to be arbitrary. In the case at bar there are no mitigating factors, only aggravating factors rendering the sentence excessive. It appears that in sentencing Jordan, the trial court did not take into account factors such as education, job history, lack of prior convictions and statements on his behalf. Instead, the trial court looked at the use of a gun in commission of the offense and sentenced Jordan to what in essence is life in prison. This court found in *Thomas* that this particular trial court has personal policy of sentencing defendants who use a firearm to *de facto* life sentences. *People v. Thomas*, 2015 IL App (3d) 120461. In *Thomas* the trial court stated, "if you're man enough to pull the trigger, you're going to be man enough to do life in prison." *Thomas*, 2015 IL App (3d) 120461. In the case at bar, the same trial court made similar comments when it stated:

> "I'm tired of sitting through these sentencings for murder, for guns, shots on the street…[i]f you bring a gun to the fight, you're going to prison; and if you're responsible for that gun being fired, either because of you or somebody you[']re] with, and you're man enough to have that gun fired and a life is taken, you're going to have to be man enough to spend the rest of your life in prison because that's the line in the sand"

¶ 43 The trial court's comments are indicative of a personal policy of this particular trial court

that if there is a firearm enhancement to sentencing, the defendant will spend the rest of his natural life in prison. Blanket sentencing policies like this are prohibited. *Thomas*, 2015 IL App (3d) 120461 (citing *People v. Bolyard*, 61 Ill. 2d 583, 587 (1975) (finding trial court acted arbitrarily in sentencing defendant based on judge's "category of disfavored offenders")). A trial court cannot sentence based on personal policy. *People v. Clemons*, 175 Ill. App. 3d 7, 13 (1988).

¶ 44 Therefore, the sentence is vacated and remanded for sentencing by a different judge.

¶ 45 CONCLUSION

¶ 46 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed in part, vacated in part and remanded for sentencing by a different judge.

¶ 47 Affirmed in part, vacated in part and remanded with directions.