2011 IL App (5th) 080537-U

NO. 5-08-0537

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Williamson County.
	)	
v.	)	No. 07-CF-452
	)	
MICHAEL J. THOMPSON,	)	Honorable
	)	John Speroni,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE CHAPMAN delivered the judgment of the court.
Justices Donovan and Wexstten concurred in the judgment.

O R D E R

¶ 1 *Held*: Court did not abuse its discretion by sending mug shots used in a photo array to the jury where they were cropped so as not to look like obvious mug shots. Court did not abuse its discretion in sentencing the defendant to consecutive sentences despite lengthy sentence for murder.

¶ 2 The defendant, Michael J. Thompson, appeals his convictions for first-degree murder and aggravated kidnaping. He argues that (1) he was denied a fair trial by the court's decision to allow jurors to see photo arrays that included mug shots of him and (2) the court abused its discretion in imposing consecutive sentences. We affirm.

¶ 3 The charges against the defendant stemmed from an incident that took place in October 2007 in Carbondale, Illinois. Benjamin Slaughter was kidnaped at gunpoint along with three of his friends who were with him at the time. Two codefendants were also charged in connection with the incident, Terrence Vinson and Travis Thompson. Travis Thompson is the defendant's cousin. He is also a cousin

of one of the victims, Michael Green. Thompson took Green to a nearby house, while the defendant and Vinson drove Slaughter and his other two friends to a wooded area, where Slaughter was shot at close range and killed. The defendant was charged with first-degree murder (720 ILCS 5/9-1(a)(1) (West 2006)) and three counts of aggravated kidnaping (720 ILCS 5/10-2(a)(5) (West 2006)). The defendant was not charged for his role in detaining Green.

¶ 4 At the defendant's trial, Michael Green testified that Benjamin Slaughter was a close friend of his. He testified that Slaughter was a drug dealer. Green met the other kidnap victims–Erica Cummings and Treavon Triplett–through Slaughter. He further testified that he had known both the defendant and Travis Thompson all his life. He had also known Vinson since he was a young child.

¶ 5 Green testified that on the morning the events at issue took place, he was with Slaughter, Triplett, and a man he knew only as "Little Folks," who was also a friend of Slaughter's. Green testified that they drove around and smoked marijuana. They then went to Erica Cummings' apartment, where they smoked more marijuana. Later, "Little Folks" left in Slaughter's car, while Slaughter, Cummings, Green, and Triplett left in Cummings' car. Slaughter was driving the car.

¶ 6 Green testified that Slaughter pulled into the parking lot behind a funeral home located near Travis Thompson's father's house. Green did not know why Slaughter pulled into the parking lot. He testified that the defendant and Vinson approached the car, and the defendant began talking to Slaughter through the open window of the car. Green testified that the defendant then pulled out a pistol and told Vinson to tie up the occupants of the vehicle. Vinson took plastic zip ties from his pocket and used them to tie the victims' hands behind their backs.

¶ 7 Green testified that he tried to talk his way out of the situation. He could not

remember everything he said, but eventually he told the defendant and Vinson that he needed to use the restroom. Green testified that at this point Travis Thompson approached the car. Green stated that he could see Thompson standing outside his father's house the entire time. When he approached the car, he, too, had a gun. According to Green, the defendant told Thompson to hold Green there until another car came for him, but instead, Thompson took Green into the house. There, Thompson beat him with the gun, pushed him to the floor, and attempted to throw a black hood over his head. Green further testified that after this, he was able to snap the zip tie that was around his wrists. He then went to the front porch where Thompson's father, Robert Thompson, was sitting with a friend. According to Green, Robert Thompson cut the remaining portion of the zip tie off of Green's wrist.

¶ 8 Green saw the defendant's mother's car pull up to the Thompson home. He testified that at this point he ran to a nearby gas station and got a ride to his girlfriend's apartment. Green did not call the police at any time. However, the following morning, he went to the hospital, and hospital personnel called the police.

¶ 9 Erica Cummings also testified at the defendant's trial. She testified that she had met Slaughter three or four months earlier and they had become friends. She met Green and Triplett through Slaughter about a month before the events at issue. She stated that she had seen the defendant only once before, on the previous day. She did not know Vinson or Thompson.

¶ 10 Cummings' testimony was mostly consistent with Green's with respect to the events that transpired before Thompson took Green to the house. There were two differences worth noting: Cummings denied smoking marijuana in her apartment, and she testified that Vinson took out the zip ties and began tying the victims' hands behind their backs without the defendant telling him to do so.

¶ 11 Cummings then described what happened after Green and Thompson left. She stated that Vinson drove the car while the defendant continued to hold the gun where the victims could see it. She estimated that they drove for approximately 1½ hours, but she acknowledged that she did not know what time it was. During the drive, the defendant kept asking Slaughter, "Where is it?" and telling Slaughter, "Take me to it."

¶ 12 Eventually, Vinson stopped the car in a wooded area. Cummings did not know where they were. She stated that the defendant got out of the car and pulled Slaughter out of the car. He then pulled Triplett out of the car. Triplett ran off into the woods. According to Cummings, neither Vinson nor the defendant tried to chase Triplett. Instead, the defendant closed the door to the car and Vinson drove away with Cummings inside the car. As the car pulled away, Cummings saw the defendant leading Slaughter into the woods. She stated that they walked into the woods in the same direction Triplett had run into the woods. At this point, she no longer saw the defendant holding the gun.

¶ 13 Vinson did not drive very far. He drove around a bend, turned the car around, and returned to the same spot to pick up the defendant. Cummings testified that she saw the defendant walking down a hill wiping his gun off with his shirt. Slaughter was not with him. She testified that the defendant got back into the car and told Vinson, " 'That other boy ran when I was taking care of my business.' " They then drove back towards Carbondale. Cummings testified that during the ride, the defendant called someone and said that they were on their way back. He then found a bottle of juice and a sweater that Cummings had left in the car. He poured the juice around the car and used the sweater to wipe it down.

¶ 14 Cummings testified that when they returned to Carbondale, Vinson parked in

front of a house she did not recognize. The defendant used a lighter to burn through the zip tie on Cummings' wrists to free her. He then told her to go to a specific car wash and get the car cleaned. He called someone on his phone, described Cummings' car, and told the person to call him when Cummings arrived at the car wash. Instead, however, Cummings drove to the home of one of Slaughter's friends. She explained that she did this because she did not know if Slaughter was alive or dead. She did not call the police. However, one of Slaughter's friends called the police, and Cummings spoke to Detective Aaron Baril that evening.

¶ 15 Detective Baril testified that he showed Cummings a photo array and asked her if she could identify the individuals involved in the kidnaping. He stated that he told her the suspect may or may not be in the photo array. He explained that he showed her two photo arrays. Each photo array contained six photographs of similar-looking individuals laid out together on a single page. One included a photograph of the defendant, and the other included a photograph of Vinson. Cummings was able to identify the defendant, but she was not able to identify Vinson.

¶ 16 Detective Baril testified that he also interviewed Treavon Triplett. He showed Triplett two different photo arrays. Again, one array contained a photograph of the defendant, and the other contained a photograph of Vinson. The photo array containing a picture of the defendant was the same array that Cummings viewed. Triplett was not able to identify him. He was, however, able to identify Vinson, although he stated that he was "about 75 percent sure" that the suspect he identified was the man he saw driving the vehicle. Triplett had been subpoenaed to testify at the defendant's trial, but he did not show up and attempts to locate him failed.

¶ 17 Four photo arrays were admitted into evidence. People's Exhibit 16 was the photo array from which Erica Cummings identified the defendant. Exhibit 26 was

another photo array containing a photograph of the defendant. Michael Green identified the defendant from this array. The other two were the photo arrays containing pictures of Terrence Vinson that were shown to Cummings and Triplett. The State did not initially request that the photo arrays be sent back to the jury room. However, during deliberations, the jury sent a note to the court asking to see the photo arrays. The defendant argued that the photo arrays would be prejudicial to the defendant because the photographs of him "appeared to be obvious mug shots." The State argued that they should go to the jury because they were properly admitted into evidence and jurors had specifically requested to see them. The court permitted all four photo arrays to be sent to the jury. The jury returned a verdict of guilty.

¶ 18 The court subsequently held a sentencing hearing. The court imposed a sentence of 75 years for the murder, including a mandatory addition of 25 years because of the use of a firearm (see 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2006)). The court imposed sentences of 20 years for each of the three counts of aggravated kidnaping. The court found that consecutive sentences were necessary to protect the public from future criminal action by the defendant and explained this finding as follows:

"Mr. Thompson has been in trouble since he's been 15 years old, and about the only time he hasn't been in trouble is when he's been in prison. This is the second time he's discharged a firearm in conjunction with a criminal offense. This time, someone was killed. There's no question in the court's mind that Mr. Thompson, if he were free, would undoubtedly hurt someone else if he had the opportunity to do so ***."

The court ordered the sentence for the aggravated kidnaping of Benjamin Slaughter to be served concurrently with the murder sentence. The court further ordered that the sentences for the two additional charges of aggravated kidnaping be served concurrently with each

other but consecutive to the murder sentence. The defendant filed a motion to reconsider his sentence, which the court denied. He then filed this appeal.

¶ 19 The defendant first argues that he was denied a fair trial because the photo arrays were admitted into evidence and sent to the jury. He contends that the photo arrays were unduly prejudicial because they contained photographs that were obvious mug shots. We disagree.

¶ 20 The admission of evidence is subject to the discretion of the trial court. *People v. Tenney*, 205 Ill. 2d 411, 436, 793 N.E.2d 571, 586 (2002). The decision of whether to send exhibits to the jury is also a matter within the trial court's discretion, and we will not reverse the court's decision absent an abuse of that discretion. *People v. Hughes*, 257 Ill. App. 3d 633, 639, 628 N.E.2d 1030, 1035 (1993). Photo arrays are generally admissible where the defendant's identity is a material issue in a case. *People v. Arman*, 131 Ill. 2d 115, 123, 545 N.E.2d 658, 662 (1989). They are relevant to show how the defendant was initially linked to the offense. *People v. Nelson*, 193 Ill. 2d 216, 224, 737 N.E.2d 632, 637 (2000). They are also relevant to show whether a witness's identification of the defendant was reasonable and accurate. *People v. Sims*, 285 Ill. App. 3d 598, 607, 673 N.E.2d 1119, 1125 (1996). Allowing jurors to see photo arrays during deliberations can help them make this determination. See *People v. Davis*, 173 Ill. App. 3d 300, 306, 527 N.E.2d 552, 556 (1988).

¶ 21 There are limits to this general rule. Obvious mug shots that will tend "to inform the jury of a defendant's commission of other, unrelated criminal acts" should not be admitted if the prejudice from the mug shots outweighs their probative value. *Arman*, 131 Ill. 2d at 123, 545 N.E.2d at 662; *People v. McDonald*, 227 Ill. App. 3d 92, 99, 590 N.E.2d 1003, 1008 (1992). However, admission of such evidence will not warrant reversal unless it is prejudicial to the defendant. *People v. Warmack*, 83 Ill.

2d 112, 128-29, 413 N.E.2d 1254, 1262 (1980); see also *Arman*, 131 Ill. 2d at 124, 545 N.E.2d at 662 (noting that a conviction may be affirmed if competent evidence other than an improperly admitted mug shot supports a finding of guilt beyond a reasonable doubt). Similarly, a court's decision to send evidence to the jury room will be reversed only if the court abused its discretion and the decision prejudiced the defendant. *People v. Williams*, 97 Ill. 2d 252, 292, 454 N.E.2d 220, 239 (1983).

¶ 22 Here, the defendant did not object to the admission of the photo arrays at trial, and much of his argument on appeal focuses on the prejudice that he contends he suffered as a result of the court's decision to send the arrays to the jury. As such, he has waived consideration of his claim that admission of the photos was in error. We will thus consider only his argument that the court erred in allowing the photo arrays to be sent to the jury room. We find no error.

¶ 23 Certain features of the photo arrays eliminated the potential for prejudice. Both of the photo arrays containing a photograph of the defendant are cropped so that the numbers showing the suspect's height in feet and inches are not visible. They essentially show a background of horizontal lines. Thus, they are less easily recognizable as mug shots than they might be if the defendant was standing in front of a ruler. This reduces the prejudice that might flow from allowing jurors to see the pictures. The photographs also do not include dates or booking information, which also greatly reduces any potential prejudice to a defendant. See, *e.g.*, *People v. Oliver*, 306 Ill. App. 3d 59, 73, 713 N.E.2d 727, 738 (1999); *People v. Hawkins*, 4 Ill. App. 3d 471, 474, 281 N.E.2d 72, 75 (1972).

¶ 24 In addition, Detective Baril did not testify that the photos came from police files. This, too, reduces the potential for prejudice. See, *e.g.*, *Nelson*, 193 Ill. 2d at 223-24, 737 N.E.2d at 636-37 (explaining that an officer's "not-so-subtle" testimony

informed jurors that the defendant had mug shots taken three different times where he specifically testified that the mug shots were taken while the defendant was in custody).

¶ 25 These factors make the instant case strikingly similar to *People v. Hughes*. There, a book of police mug shots was admitted into evidence. *Hughes*, 257 Ill. App. 3d at 638, 628 N.E.2d at 1034. The book contained only photographs; all pages with words or identifying labels were removed. *Hughes*, 257 Ill. App. 3d at 639, 628 N.E.2d at 1034. During trial, all witnesses referred to the book as a "photo book" rather than a "mug book." *Hughes*, 257 Ill. App. 3d at 639, 628 N.E.2d at 1034. The appellate court found no abuse of the trial court's discretion in sending it to the jury because these features eliminated any potential prejudice to the defendant. *Hughes*, 257 Ill. App. 3d at 639, 628 N.E.2d at 1035. Here, too, we find that the potential for prejudice was so minimal that allowing jurors to see the photo arrays did not constitute an abuse of discretion.

¶ 26 In reaching this conclusion, we note that Michael Green's ability to accurately identify the defendant was not at issue in this case. Green knew the defendant his entire life. Erica Cummings' identification of the defendant was far more material than Green's. Cummings did not know the defendant, and she was the only eyewitness to testify to what occurred immediately before the murder. Allowing jurors to see the photo array helped them to decide whether her identification of the defendant was accurate. It is also important to note that the jury specifically requested to see the arrays. See *Davis*, 173 Ill. App. 3d at 306, 527 N.E.2d at 556. Moreover, we have found the potential for prejudice to the defendant to be so slight that we find no abuse of discretion in allowing the jurors to see the photo arrays. Considering all of the circumstances, we find no abuse of discretion.

¶ 27 The defendant raises one final contention related to the photo arrays. He argues that sending them to the jury room violated a stipulation under which the State had agreed not to send them to the jury. We agree with the State that the record contradicts this claim. As the defendant points out, during discussions on the admissibility of the photo arrays, defense counsel indicated that the State did not intend to request that the photo arrays be sent to the jury. The prosecutor stated that this was correct. As previously discussed, the State did not ask for the photo arrays to be sent to the jury until the jury specifically requested to see them. This discussion does not amount to a stipulation and does not alter our conclusion that the photo arrays were properly sent to the jury.

¶ 28 The defendant next argues that the trial court abused its discretion in imposing consecutive sentences. The crux of his argument is that the extended sentence of 75 years for the murder is so lengthy that it alone constitutes, in essence, a life sentence. We reject this contention.

¶ 29 As the defendant points out, consecutive sentences should be imposed sparingly. *People v. Coleman*, 166 Ill. 2d 247, 257-58, 652 N.E.2d 322, 327 (1995). However, they are justified when the nature and circumstances of the case as well as the defendant's history and character indicate that imposing consecutive sentences is necessary to protect the public. *People v. Lopez*, 228 Ill. App. 3d 1061, 1075, 593 N.E.2d 647, 657 (1992). A trial court is not required to state in the record its reasons for finding that consecutive sentences are necessary to protect the public as long as the record supports such a finding. *Lopez*, 228 Ill. App. 3d at 1075, 593 N.E.2d at 657. Like other sentencing matters, the decision to impose consecutive sentences rests within the discretion of the trial court because the trial court is in a better position than we are to determine the most appropriate sentence. *Lopez*, 228 Ill. App.

3d at 1076-77, 593 N.E.2d at 658. The court's sentence is thus entitled to great deference, and we will modify a sentence only if we find an abuse of that discretion. *Coleman*, 166 Ill. 2d at 258, 652 N.E.2d at 327.

¶ 30 Here, the defendant argues that the record does not support the court's determination that consecutive sentences are necessary to protect the public due to the length of his sentence for murder. He points out that he must serve 100% of that 75-year sentence (see 730 ILCS 5/3-6-3(a)(2)(i) (West 2006)), and by the time he is released, he will be 104 years old, assuming he lives that long. He further points out that the trial court itself noted that any sentence it could impose would be, in essence, a life sentence. The court explained that the minimum sentence it could impose would be 45 years due to a mandatory addition of 25 years to life because the offenses were carried out with a firearm (see 730 ILCS 5/5-8-1(a)(1) (d)(iii) (West 2006)) and that the defendant would therefore be 74 years old after even a 45-year sentence. He argues that the court's decision to impose consecutive sentences is at odds with this observation and that it is not necessary to protect society from a 104-year-old man. We are not persuaded.

¶ 31 The supreme court rejected a nearly identical argument in *Coleman*. There, a defendant was sentenced to 50 years in prison for each of three armed robberies and 85 years for a murder. *Coleman*, 166 Ill. 2d at 252, 652 N.E.2d at 324-25. The court ordered the sentences for armed robbery to be served concurrently with each other but consecutively to the 85-year murder sentence. *Coleman*, 166 Ill. 2d at 252, 652 N.E.2d at 325. Much like the court here, the trial court there found the sentences necessary to protect the public in light of the defendant's previous crimes, which the court found had become "increasingly dangerous" to the public. *Coleman*, 166 Ill. 2d at 260, 652 N.E.2d at 328. The defendant argued on appeal that the need to protect

the public did not support the imposition of consecutive sentences due to the length of the 85-year murder sentence. *Coleman*, 166 Ill. 2d at 261, 652 N.E.2d at 329. With little discussion, the supreme court rejected this claim, noting only that the sentences were all within the statutorily prescribed ranges and the defendant was eligible for a life sentence. *Coleman*, 166 Ill. 2d at 261, 652 N.E.2d at 329.

¶ 32 We note that the *Coleman* defendant did not specifically challenge the notion that it would be necessary to protect society from him due to his advanced age. Nevertheless, we think this is implicit in his argument. Even an 18-year-old defendant sentenced to 85 years in prison will be 103 years old upon release, and, as the State points out, the *Coleman* defendant had a lengthy criminal history that indicated he was likely older than that. See *Coleman*, 166 Ill. 2d at 258, 652 N.E.2d at 328 (outlining a 12-year history of felony convictions). Here, as in *Coleman*, the sentences are all within proper statutory ranges. Here, too, the defendant is eligible for a natural-life sentence. See 730 ILCS 5/5-8-1(a)(1)(d)(iii) (West 2006). We find no abuse of discretion.

¶ 33 We conclude the trial court properly exercised its discretion in sending the photo arrays to the jury and sentencing the defendant to consecutive terms. Thus, we affirm the defendant's convictions and sentences.

¶ 34 Affirmed.