

**NOTICE**

Decision filed 05/28/14. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2014 IL App (5th) 110481-U

NO. 5-11-0481

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

**NOTICE**

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

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 09-CF-1130
	)	
DORIAN BOYD,	)	Honorable
	)	Vincent J. Lopinot,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE CATES delivered the judgment of the court.  
Justices Spomer and Chapman concurred in the judgment.

**ORDER**

¶ 1 *Held:* The State provided an adequate foundation for the admission of surveillance videos and still photographs, and the admission of that evidence did not deprive the defendant of a fair trial. The trial court did not err in permitting lay testimony identifying the defendant as the shooter in the videos where the witnesses testified based on personal knowledge of the defendant's appearance before the videos were made and where the testimony aided the jury in resolving the issue of the shooter's identity. The defendant failed to establish that his 40-year prison sentence was excessive. Judgment affirmed.

¶ 2 Following a jury trial in the circuit court of St. Clair County, the defendant, Dorian Boyd, was convicted of first-degree murder and sentenced to a 40-year prison term. On appeal, the defendant contends that he was denied a fair trial because the trial court

erroneously admitted surveillance videos and still photographs that had been made from the videos without an adequate foundation. The defendant claims that the State failed to show that the surveillance system was properly installed or properly tested and maintained to assure the reliability of the process that produced the surveillance videos. The defendant also contends that he was denied a fair trial because the trial court permitted witnesses who lacked personal knowledge of the events depicted in the surveillance videos to offer lay opinions that the defendant was the shooter depicted in the videos. Finally, the defendant contends that his 40-year prison sentence is excessive. We affirm.

¶ 3 The defendant was charged with one count of first-degree murder in the shooting death of Dion Hardin. He entered a plea of not guilty and demanded a jury trial. A summary of the evidence presented during the trial follows.

¶ 4 On September 22, 2009, at approximately 2:30 a.m., a young man named Dion Hardin was shot in the chest while he stood on the front porch of Club Peek-A-Boo (the club), a nightclub in Brooklyn, Illinois. Hardin had just stepped outside, onto the front porch of the club, when a man approached him and shot him once in the chest. Hardin managed to stumble back into the club before he collapsed. By all accounts, at least six or seven other men were standing outside the entrance to the club when Hardin was shot. They ran off after the shooting.

¶ 5 Someone called 911, and police and emergency medical personnel responded. Delbert Marion, chief of police of the Village of Brooklyn, was the first police officer on the scene. As he pulled up near the entrance to the club, he noticed that there was no one

outside. Upon stepping inside the front door of the club, he saw a black male lying on the floor. Three women were attending to him. Chief Marion learned that the man's name was Dion Hardin and that he had been shot. Chief Marion called for an ambulance. When the medics arrived, they began to assess Hardin's condition. As Chief Marion looked on, the medics rolled Hardin over and cut off his t-shirt, exposing a puncture wound to his chest. There was blood coming from the wound and from Hardin's mouth. The medics immediately placed Hardin into an ambulance and transported him to an area hospital.

¶ 6 After Hardin was taken from the scene, Chief Marion contacted the Illinois State Police and asked for assistance in investigating the shooting. Investigators and crime scene technicians from the Illinois State Police were dispatched to the club. Chief Marion and two police officers from neighboring jurisdictions secured the scene until state police investigators arrived. A Venice police officer named Ron Shafer was stationed at the front entrance to the club, where the shooting had occurred. He spotted a spent shell casing on the sidewalk a few feet from the club's front steps, and pointed it out to the crime scene technicians. One of the crime scene technicians photographed the spent casing, which was then collected as evidence.

¶ 7 Chief Marion was securing the area inside the club when he received a call from the hospital, notifying him that Hardin had passed away. An autopsy revealed that Hardin died from massive internal hemorrhaging and cardiac tamponade secondary to a single gunshot wound to his chest. The bullet traveled through the pericardium and

damaged several organs. A fragment of the bullet was recovered from Hardin's body and preserved as evidence.

¶ 8 Shortly after the shooting, the police made contact with the occupants of a vehicle that was parked near the club. The driver of the vehicle and the back seat passenger were taken into custody on outstanding warrants. The passenger in the front seat was released after giving an alias name. The police conducted an inventory search of the vehicle and a .45-caliber handgun was found under the front passenger seat. The gun was seized. Investigators later submitted the gun, the spent shell casing, and the bullet fragment to the Illinois State Police lab for analysis. Testing revealed that the spent casing and the bullet fragment had been fired from that particular gun.

¶ 9 A few minutes after learning of Hardin's death, Chief Marion spoke with Andrea Garrett. Andrea and her husband, Madison Garrett, owned the club. Andrea told Chief Marion that she was on the premises, stacking cases of beer, when she heard what sounded like a gunshot. A few moments later, someone yelled out that Hardin had been shot. Andrea ran to the bar area. She saw Hardin lying on the floor in the gangway near the front entrance. Andrea also told Chief Marion that the club had a video surveillance system, and she offered to play the surveillance videos for investigators.

¶ 10 Tyson Melvin, a special agent with the Illinois State Police, arrived at the club about 4 a.m. After receiving a briefing from Chief Marion, Agent Melvin met with Andrea Garrett and asked her about the club's surveillance system. Andrea told him that there were seven cameras taking video of the front entrance from various angles, and that the cameras fed the images to a digital video recorder (DVR). Andrea explained to Agent

Melvin that the DVR and a video monitor were housed in a storeroom secured with a keyed lock and a coded lock, and that she was the only person who had a key and the code to that room. Agent Melvin then asked to see the surveillance videos. Andrea, Madison Garrett, Agent Melvin, Chief Marion, and Officer Shafer gathered in the storeroom to watch the surveillance videos that had been recorded earlier that morning. Andrea used a handheld remote control device to play, rewind, and replay the videos. After viewing the videos, Agent Melvin called for assistance from Agent James Patterson and Agent Byron Workman who were specialists in video duplication and processing.

¶ 11 Agent Patterson and Agent Workman arrived at the club around 8 a.m. on the morning of September 22, 2009. Shortly after their arrival, they inspected the digital video recording system and noted that all of the cameras fed images into a single DVR, and that the DVR recorded and preserved the images on an internal hard drive. Next, they determined that the DVR device was operating properly and that it had recorded and preserved images of the shooting incident from all seven cameras. Agent Patterson then retrieved the recorded images from camera one and camera two. He used a portable recorder to copy the recordings to eight-millimeter cassettes. The cassettes had not been previously used. They were "factory fresh." Upon concluding that it would take an extensive period of time to retrieve and duplicate the images from the other cameras, Agent Patterson and Agent Workman sought and received permission to take the DVR to the police station to complete their work.

¶ 12 During the trial, Agent Patterson provided a detailed description of the manner in which he made copies of the videos. He testified that he duplicated the videos at real-

time speed and without any alterations or modifications to the original content. He noted that he used a reliable and accepted method to download and duplicate the videos. He testified that he reviewed the content of the original videos and his copies, and he determined that his copies accurately reflected the original content. During cross-examination, Agent Patterson testified that the original surveillance videos were of "decent" quality. He acknowledged that a bright light located outside the front of the club washed out part of the left side of the picture as the cameras recorded the shooting.

¶ 13 Agent Workman testified that when he made cassette copies of the images from the other cameras, he followed the same procedure that Agent Patterson had described. Agent Workman stated that he also made a "slow-play" recording of the videos from cameras one and two at the request of the State's Attorney's office, so that there were regular and slow-play recordings of those two videos. He noted that the slow-play recording slowed down the speed of the videos, but did not otherwise alter or change the images or content contained in the videos. The DVR and the cassettes were delivered to Agent Melvin, who secured them in an evidence vault. Agent Workman also testified that he made still prints from some of the surveillance videos, and that those prints were fair and accurate depictions of the images in the videos.

¶ 14 Chief Marion testified that his only role in the investigation, aside from securing the scene pending arrival of the state police, was viewing the original surveillance videos. Chief Marion stated that he thought the quality of the original surveillance videos was "pretty good." During cross-examination, he testified that he had detected the flash of a

gun in some of the video images. He also testified that he did not know any of the individuals shown in the videos.

¶ 15 Andrea Garrett testified that the surveillance system was working properly on the morning of September 22, 2009. She stated that she viewed both the original videos and the cassette copies, and she found that the copies accurately reflected the content in the original videos. Andrea testified that she recognized many of the young men depicted in the recordings. Andrea stated that she had known Dion Hardin since he was a little kid. She noted that he hung out at her club and that occasionally he helped her even though he was not employed there. Andrea testified that she had known the defendant for "just about all of his life." She stated that she was familiar with the defendant's build, his mannerisms, and his physical characteristics.

¶ 16 When the videos were played for the jury, Andrea Garrett pointed out and identified by name or nickname many of the young men depicted in the recordings, including the defendant, Dion Hardin, and a man named Christopher Adams. Andrea testified that she was 100% certain that the defendant was the man who was shown confronting Hardin in the video. She stated that when she viewed the video, she saw a gun in the defendant's hand. During cross-examination, she acknowledged that she did not see a gun flash in the surveillance videos, but she did notice that Hardin collapsed as the gun was pointed up against his chest. Andrea also made an in-court identification of the defendant. She testified that the defendant's appearance had changed since the day of the shooting. She stated that the defendant had lost weight and that he now had a shorter haircut.

¶ 17 Madison Garrett testified that he viewed the original videos on the morning of the shootings and a few times thereafter, and that he noted no alterations or changes to the videos in those subsequent viewings. He testified that when he saw the original videos on the morning of the shooting, he was able to recognize the defendant as the man who confronted Hardin. Madison stated that he had known the defendant long before the shooting. He noted that the defendant had lived across the street from him for several years. He stated that he was familiar with the defendant's physical appearance and mannerisms. Madison made an in-court identification of the defendant. He testified that the defendant's appearance had changed since the day of the shooting. He noted that the defendant had lost a lot of weight and that he now had a shorter haircut and a clean shave.

¶ 18 Officer Shafer testified that that he had known the defendant for over four years, that he had seen him walk from place to place, and that he had talked with him on occasion. He stated that he was familiar with the defendant's physical appearance, characteristics, and mannerisms based on personal interactions with the defendant. Officer Shafer testified that he initially viewed the surveillance videos on September 22, 2009, and that when he viewed those videos, he was able to identify the defendant and to observe that the defendant had something in his right hand that appeared to be a gun. Officer Shafer made an in-court identification of the defendant. He also noted that the defendant's appearance had changed since the day of the shooting. He stated that the defendant had lost between 100 and 150 pounds. Officer Shafer testified that he viewed both the original videos and the cassette copies, and he found that the cassettes were accurate copies of the original videos.



¶ 19 The State called Christopher Adams as a witness. Adams was one of the young men standing outside the club entrance when Hardin was shot. At the outset of his testimony, Adams acknowledged that he had agreed to testify at the trial pursuant to a deal he made with the State. Adams stated that in exchange for his truthful testimony about the shooting, the State had agreed to recommend a sentence of 48 months' probation on an unrelated drug charge.

¶ 20 Adams testified that just before the shooting, he was standing outside the club, "chillin" with a few other guys. He saw Hardin walk out of the club. Hardin was carrying a plate of chicken. Adams stated that he then saw the defendant pull a pistol from his waistband and shoot Hardin. At that point, everyone scattered. Adams testified that he heard just one shot. He stated that he saw the gun in the defendant's hand. It was black. Adams did not see anyone else with a gun that morning. Adams stated that Hardin had not provoked the defendant before the shooting. Adams testified that he had seen the surveillance videos from the morning of September 22, 2009, and that the videos accurately depicted what he had witnessed that morning.

¶ 21 Adams testified that the police called his phone and his mother's phone several times on the morning of the shooting. He stated that he did not want to talk to them, but he finally relented and went to the police station. Adams admitted that when he was interviewed by a police officer, he attempted to avoid answering the questions directly. Adams said that he had no prior problems with the defendant and he did not want to tell the police that the defendant was the person who shot Hardin. Adams identified the defendant in court, and he testified that the defendant was the man who shot Hardin.

¶ 22 During cross-examination, Adams acknowledged that he had lied to the police. He admitted that he lied when he told the police officer that he did not know if the defendant or "the skinny dude" shot Hardin. Adams testified that he lied because he had not had any problems with the defendant. When defense counsel asked Adams why the jury should believe his trial testimony, Adams simply replied that he swore "under oath," and "you don't lie under stuff like that."

¶ 23 In his first point on appeal, the defendant contends that he was deprived of a fair trial because the court erroneously admitted the surveillance videos and still photographs as substantive evidence without an adequate foundation. The defendant argues that the State failed to show that the surveillance system was properly installed by a competent operator or properly tested and maintained to assure the reliability of the process that produced the surveillance videos. The defendant also argues that the State failed to lay a proper foundation for the use of the videos and still photographs as demonstrative evidence.

¶ 24 The decision to admit a surveillance video is within the sound discretion of the trial court and its decision will not be disturbed absent an abuse of discretion. *People v. Taylor*, 2011 IL 110067, ¶ 27, 956 N.E.2d 431. An abuse of discretion occurs when the trial court's ruling is unreasonable or when no reasonable person would adopt the trial court's view. *Taylor*, 2011 IL 110067, ¶ 27, 956 N.E.2d 431.

¶ 25 Under the silent witness theory, a surveillance video may be admissible as substantive evidence in the absence of authentication by an eyewitness with personal knowledge of the content if there is adequate proof of the reliability of the process that

produced the recording. *Taylor*, 2011 IL 110067, ¶ 35, 956 N.E.2d 431. The following list of factors may be considered in determining the reliability of the production process: (1) the device's capability for recording and general reliability; (2) the competency of the operator; (3) the proper operation of the device; (4) showing the manner in which the recording was preserved (chain of custody); (5) identification of the persons, locale, or objects depicted; and (6) explanation of any copying or duplication process. *Taylor*, 2011 IL 110067, ¶ 35, 956 N.E.2d 431. This list of factors is nonexclusive. Each case must be evaluated individually and depending on the facts, some factors may not be relevant or additional factors may need to be considered. *Taylor*, 2011 IL 110067, ¶ 35, 956 N.E.2d 431. In each and every case, the accuracy and reliability of the process that produced the recording is the dispositive issue regarding foundation. *Taylor*, 2011 IL 110067, ¶ 35, 956 N.E.2d 431.

¶ 26 In this case, there is no evidence regarding the competency of the contractor who installed the surveillance system and no evidence regarding the general reliability of this type of surveillance system. But these two factors are not dispositive of the issue of whether a proper foundation was laid. The dispositive issue in every case is the accuracy and reliability of the process that produced the recordings. In this case, Andrea Garrett testified that the DVR was properly functioning on the morning of the shootings, and Agent Patterson confirmed that testimony. Further, the existence of the video constitutes some evidence that the surveillance system was functioning on September 22, 2009. There is sufficient evidence in the record to establish that the original content and the copies were properly preserved. Andrea Garrett testified that she alone had the key and

the code to the room where the DVR was housed. Agent Patterson and Agent Workman testified in great detail about the manner in which the original recordings were preserved and the manner in which copies were created and stored. Andrea Garrett, Madison Garrett, and Officer Shafer testified that the copies accurately represented the content of the original recordings. There was also testimony that the still photographs were accurate depictions of images in the original surveillance video. There was no evidence that the original videos or the copies were fabricated, tampered with, or otherwise contaminated. In our view, the accuracy and reliability of the process was established and there was an adequate foundation for the admission of the surveillance videos and still photographs as substantive evidence under the silent witness doctrine.

¶ 27 A video recording may be used for demonstrative purposes if a person with personal knowledge of the recorded events testifies that the video recording is a fair and accurate representation of what occurred at the relevant time. *People v. Flores*, 406 Ill. App. 3d 566, 572, 941 N.E.2d 375, 381 (2010). In this case, Christopher Adams was an eyewitness to the shooting. He testified that he saw the defendant shoot Dion Hardin outside the club on the morning of September 22, 2009. He also testified that the surveillance videos accurately recorded what occurred outside the front entrance to the club during the early morning hours on September 22, 2009. Adams' testimony provided an adequate foundation for the use of the videos as demonstrative evidence.

¶ 28 After reviewing the record, we find that an adequate foundation was laid for the use of the surveillance videos and the still photographs as substantive evidence and

demonstrative evidence, and we find no abuse of discretion in the admission of these items into evidence.

¶ 29 The defendant next contends that he was denied a fair trial because the trial court permitted witnesses who lacked personal knowledge of the events depicted in the surveillance videos to offer lay opinions that the defendant was the shooter depicted in the videos. The defendant argues that this testimony invaded the province of the jury and, therefore, requires a new trial.

¶ 30 Identification testimony by a lay witness who has no personal knowledge of the events depicted in a surveillance video is admissible if: (1) the witness testifies based on personal knowledge of the defendant's appearance at or before the time the video was made, and (2) the testimony aids the trier of fact in resolving the issue of identification. *People v. Starks*, 119 Ill. App. 3d 21, 26, 456 N.E.2d 262, 265 (1983).

¶ 31 In this case, the record shows that each witness testified based on personal knowledge of the defendant's appearance at or before the time that the video was made. Andrea Garrett, Madison Garrett, and Officer Shafer viewed surveillance videos of the shooting on the morning of September 22, 2009. Each identified the defendant as the person shown in the video who confronted Hardin. Each had known the defendant for several years prior to the shooting on September 22, 2009. Each was familiar with the defendant's appearance, his personal characteristics, and his mannerisms. The record also shows that the testimony of the witnesses aided the jury in resolving the issue of the shooter's identity. In this case, the defendant was in view of the cameras for only a few seconds, and there were several other young men shown moving about. In addition, there

were some outside lights in the background that washed out part of the left side of the pictures. Further, the witnesses testified that the defendant's appearance had changed between the time of the shooting and the trial. Each witness noted that the defendant had lost a significant amount of weight. Andrea Garrett and Madison Garrett testified that the defendant had a shorter haircut at the time of the trial. We are not persuaded by the defendant's contention that the identification testimony of Andrea Garrett and Officer Shafer invaded the province of the jury. During direct examination, Andrea Garrett and Officer Shafer identified the defendant as the man in the video who could be seen confronting the victim and the man in the video with a gun. Neither witness provided a narrative of the events depicted in the videos. It was during cross-examination that the witnesses were taken through the video, frame by frame, and asked about what they could and could not see in each frame.

¶ 32 After reviewing the record, we find that the identification testimony was rationally based on the witnesses' personal knowledge of the defendant before the occurrence and their perceptions of what they saw in the videos. We further find that the testimony from these witnesses aided the jury in resolving the issue of identification. Under the circumstances presented here, we do not believe that the testimony invaded the province of the jury, or that the admission of the testimony deprived the defendant of a fair trial.

¶ 33 The defendant also contends that the 40-year prison sentence is excessive considering that he does not have a serious criminal history, and that he has family support and potential for rehabilitation.

¶ 34 A trial court has broad discretion in imposing a sentence. *People v. Stacey*, 193 Ill. 2d 203, 209, 737 N.E.2d 626, 629 (2000); *People v. Fern*, 189 Ill. 2d 48, 53, 723 N.E.2d 207, 209 (1999). The trial court's sentencing decisions are accorded great deference because ordinarily the trial court is in a better position than a reviewing court to consider the defendant's credibility, demeanor, general moral character, and other social factors as it determines an appropriate sentence. *Fern*, 189 Ill. 2d at 53, 723 N.E.2d at 209. Absent an abuse of discretion, the sentence imposed by the trial court may not be altered on review. *Stacey*, 193 Ill. 2d at 209, 737 N.E.2d at 629. A sentence within statutory limits will not be found to be excessive or the result of an abuse of discretion unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense. *Fern*, 189 Ill. 2d at 54, 723 N.E.2d at 210. The spirit and purpose of the law are promoted when a sentence reflects the seriousness of the offense and gives adequate consideration to the rehabilitative potential of the defendant. *People v. Heflin*, 71 Ill. 2d 525, 545, 376 N.E.2d 1367, 1376-77 (1978).

¶ 35 In this case, the defendant was found guilty of first-degree murder. The statutory range of punishment for first-degree murder is 20 to 60 years' imprisonment. 730 ILCS 5/5-4.5-20(a) (West 2010). The trial court sentenced the defendant to a term of 40 years in prison, and that term is within the statutory range of punishment. During the sentencing hearing, the trial court stated that it had considered the applicable factors in aggravation and mitigation. The court found that the murder was cold-blooded and senseless. The court also found that there was no evidence of provocation and that the

defendant had shown no remorse. The court considered the defendant's criminal history and determined that it was not "exceptionally bad." The record does not support the defendant's contention that the trial court ignored evidence of the defendant's rehabilitative potential. The defendant has failed to show that a 40-year sentence is excessive or that the trial court abused its discretion in imposing the sentence.

¶ 36 Accordingly, the judgment and sentence are affirmed.

¶ 37 Affirmed.