

No. 1-11-3287

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

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 2196
)	
LEE CRATION,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Justices Hall and Reyes concurred in the judgment.

ORDER

¶ 1 *Held:* The playing of a store surveillance video that depicted the victim's shooting did not constitute prejudicial error that substantially outweighed the evidence's probative value.

¶ 2 Following a jury trial, defendant Lee Cration was convicted of first degree murder. Due to defendant's previous murder conviction, the trial court imposed a mandatory sentence of natural life in prison. On appeal, defendant contends that prejudicial error occurred during his trial when the State played twice for the jury the portion of a surveillance video that depicted the crime. We affirm.

¶ 3 The following facts are relevant to the issue raised on appeal. Defendant was convicted of fatally shooting Ralph Elliot in the parking lot of a Popeye's Chicken restaurant near 47th Street and Drexel Boulevard in Chicago on December 24, 2009. The shooting was witnessed by several people inside the business and was recorded by a surveillance camera operated by the restaurant.

¶ 4 At trial, Willie Holt, a maintenance supervisor for the Popeye's Chicken location where the crime occurred, testified that a video surveillance system had been in place for a year prior to the shooting. Holt met with police detectives who copied the surveillance video onto a DVD approximately 60 minutes in length, which depicted what took place between 3:30 and 4:30 p.m.

¶ 5 As part of Holt's testimony, the video was played for the jury in its entirety. The video showed defendant pacing along the side of the building while Elliot parked his car, entered the restaurant and returned to his car with a bag of food. While Elliot was seated in his car with the driver's door open, defendant approached Elliot and shot him. No other car or person was in the parking lot at the time of the shooting.

¶ 6 Portions of the video also were played during the testimony of four additional witnesses. Debbie Dordies, a cashier at the restaurant, testified she saw defendant four or five times that day inside the business. She said defendant wore a black coat and "had just been standing around, watching" and that he "came in three or four times" and left without buying anything.

¶ 7 At about 4 p.m., the restaurant's manager came inside from the parking lot and shouted that something had happened. Dordies and several other employees, including Latoya Perkins, went to the front door and saw "a man holding up another man" near a car about 30 feet away from where they were standing. Dordies testified defendant was holding onto Elliot and putting

his hands in Elliot's coat while looking toward the restaurant. When a car pulled into the parking lot, defendant released his grip on Elliot, who fell to the ground unresponsive. Defendant then walked away toward 47th Street.

¶ 8 The State asked to play a portion of the surveillance video, and defense counsel objected the footage was cumulative and that no foundation had been laid for its entry. The court overruled the defense objection, and the State played portions of the video that depicted the shooting. Dordies stated the video accurately depicted what she observed. Dordies testified that after the shooting, she called 911 and followed defendant on foot, keeping him in sight until police arrested him in the yard of a nearby apartment building.

¶ 9 Perkins testified that defendant and Elliot were in the space between the open car door and the driver's seat and that defendant was patting the victim's coat and pockets while holding him up. Defendant wore a black trench coat, and Perkins saw defendant's face as he walked past the restaurant toward 47th Street. Perkins testified Elliot lay motionless near his car when defendant walked away. Dordies, Perkins and other witnesses identified defendant in individual show-up identifications.

¶ 10 Chicago police officer Francis Frye testified he responded to the emergency calls from the restaurant and that he and Sergeant Troy Bryant of the University of Chicago police department, acting as backup, arrested defendant about 700 feet away from the Popeye's parking lot. A weapon was recovered from defendant, and forensic testing revealed the two bullets taken from Elliot's body were fired from defendant's weapon. When defendant was arrested, he admitted shooting "the old man" and doing so "in the parking lot." During the testimony of Officers Frye and Bryant and of Chicago police officer Livius Tomescu, who accompanied a

witness to identify defendant near the crime scene, portions of the surveillance video were played that showed those officers in or near the restaurant parking lot after the shooting occurred and the suspect had left the scene.

¶ 11 Defense counsel argued to the jury that defendant's arrest was a result of mistaken identity. The defense presented a witness who testified he had met defendant at his church and had hosted defendant for meals.

¶ 12 On appeal, defendant contends his conviction should be reversed and his case remanded for a new trial because the trial court committed prejudicial error in allowing the State to repeatedly show the surveillance video to the jury. Though defendant acknowledges the video's probative value, he argues its repeated showing was unnecessarily cumulative and prejudicial and that it supported the credibility of the State's key witnesses.

¶ 13 In response, the State points out that the portion of the video depicting the shooting was not played for the jury a total of five times, as defendant asserts, but was shown to the jury during the testimony of two witnesses, Holt and Dordies. Defendant concedes those facts in his reply brief and also concedes that defense counsel objected to the second showing of the video, during Dordies' testimony, but that counsel did not object to the playing of the video at any point during the testimony of three subsequent witnesses.

¶ 14 Defendant nevertheless maintains that even though the later showing of the video did not include the footage of the actual shooting, the content of the recording were cumulative and lacked any demonstrative value "after the second or third showing." He contends the repeated showing of the footage only served to bring "the jurors' minds back to the graphic, heinous

shooting," and he argues the repeated showing of the video distracted from the issue of the credibility of the identification testimony of the eyewitnesses to the crime.

¶ 15 The admission of relevant evidence such as a properly authenticated videotape is within the sound discretion of the trial court and will not be reversed absent a showing of an abuse of that discretion. *People v. Becker*, 239 Ill. 2d 215, 234 (2010). A trial court abuses its discretion only when no reasonable person could agree with the trial court's view. *People v. Illgen*, 145 Ill. 2d 353, 364 (1991).

¶ 16 Defendant does not dispute the surveillance camera footage was authenticated through Holt's testimony or that its contents were admissible as relevant evidence in that the DVD accurately represented what occurred. See *People v. Harvey*, 211 Ill. 2d 368, 392 (2004) (evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence). A trial court may exclude relevant evidence if its prejudicial effect substantially outweighs its probative value. *People v. Walker*, 211 Ill. 2d 317, 337-38 (2004). That test makes clear that evidence will not be excluded if those values are equal or if the relevant evidence is more prejudicial than probative. Relevant evidence is inadmissible only if the prejudicial effect of admitting that evidence substantially outweighs any probative value. See *People v. Hanson*, 238 Ill. 2d 74, 102 (2010).

¶ 17 Evidence with sufficiently probative value may be admitted despite its inflammatory nature. *People v. Degorski*, 2013 IL App (1st) 100580, ¶ 100. For example, even gruesome or disturbing video of a crime scene may be admitted into evidence if it is "relevant to establish any fact [at] issue." *Id.* at ¶ 97 (trial court did not abuse its discretion in admitting video that showed

the removal of victims' bodies from freezer to rebut the defense's theory that bloody shoe prints in freezer were not those of police); see also *People v. Pelo*, 404 Ill. App. 3d 839, 867-68 (2010) (trial court did not abuse its discretion in admitting various pornographic images in defendant's possession; that evidence had probative value by showing the defendant had the same proclivities as the perpetrator of the crimes).

¶ 18 Evidence of a graphic nature may be relevant to corroborate oral testimony. *Degorski*, 2013 IL App (1st) 100580, ¶ 97. Competent evidence should not be excluded merely because it may arouse the jury's feelings of horror or indignation. *People v. Driskel*, 224 Ill. App. 3d 304, 314-15 (1991); see also *People v. Abrego*, 371 Ill. App. 3d 987, 997-98 (2007) (admittedly "gruesome" autopsy photographs depicting bullet wounds were properly admitted as relevant to issue of close-range firing of weapon).

¶ 19 In contrast, evidence has a prejudicial effect when it somehow casts a negative light upon a defendant for reasons unrelated to the case at trial or when the jury "would be deciding the case on an improper basis, such as sympathy, hatred, contempt, or horror." *Pelo*, 404 Ill. App. 3d at 867; see also *People v. McSwain*, 2012 IL App (4th) 100619, ¶ 37. The effect of prejudicial or inflammatory evidence depends on the circumstances of the case, and it is the trial court's function to weigh the potential prejudicial effect against the evidence's probative value. *People v. Williams*, 181 Ill. 2d 297, 314 (1998).

¶ 20 Here, the footage from the surveillance video did not implicate defendant for reasons unrelated to these events. The video illustrated the testimony of Dordies and allowed the jury to see an image of the gunman, who stood outside the restaurant within camera range for several minutes before the shooting. The video therefore had significant probative value to verify

Dordies' account of the shooting. This court has viewed the portion of the surveillance video that shows the shooting. Although the footage is unsettling and was likely difficult for jurors to watch, and we do not understate its depiction of the end of the victim's life, however, the video did not display the offense at close range and was not bloody or graphic. Based on the facts of this case, we cannot agree with defendant that any potential prejudicial effect of two showings of the shooting portion of the surveillance video to the jury could have outweighed the probative value of that evidence. Therefore, the trial court did not abuse its discretion in admitting the evidence.

¶ 21 Accordingly, the judgment of the trial court is affirmed.

¶ 22 Affirmed.