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2014 IL App (3d) 120529-U

Order filed June 10, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-12-0529
JOHN CARTER,	)	Circuit No. 11-CF-182
Defendant-Appellant.	)	Honorable Stephen A. Kouri, Judge, Presiding.

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JUSTICE CARTER delivered the judgment of the court.  
Presiding Justice Lytton and Justice Wright concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The trial court did not abuse its discretion in ordering defendant to serve sentences consecutively where consecutive sentences were mandated by statute.
- ¶ 2 Following a jury trial, defendant, John Carter, was convicted of two counts of armed robbery (720 ILCS 5/18-2(a)(2) (West 2010)) and sentenced to two terms of 22 years' imprisonment, to run consecutively for a total of 44 years. Defendant appeals, arguing that the trial court abused its discretion in ordering the sentences to run consecutively. We affirm.

FACTS

¶ 3

¶ 4

On March 15, 2011, defendant was charged by indictment with two counts of armed robbery, a Class X felony (720 ILCS 5/18-2(a)(2), (b) (West 2010)) and two counts of aggravated battery with a firearm (720 ILCS 5/12-4.2(a)(1) (West 2010)). The indictment alleged that on February 21, 2011, defendant, while armed with a handgun, took property from Alfred Aldick and Elie Moawad. Prior to trial, defendant rejected an offer from the State that contemplated his testifying against Tyshontis Campbell.

¶ 5

At defendant's jury trial, Aldick testified that on February 21, 2011, defendant and Campbell entered the restaurant at which he and Moawad were working. While defendant approached the cash register to order food, Campbell shot Aldick in the chest, then shot Moawad in the hip. After shooting Aldick, Campbell forced him at gunpoint to open the cash register, and defendant took money from the register. Moawad testified that while at the register, defendant instructed Campbell to "Shoot [Aldick]." Both victims testified that it was only Campbell who carried and used the handgun. No testimony from any other witnesses in the case indicated that defendant was ever in possession of the firearm.

¶ 6

Aldick and Moawad each suffered serious injuries as a result of the gunshots. Aldick lost a kidney, half of his pancreas, and half of his liver. Aldick was in the hospital for 1½ months following the shooting, and at the time of the trial he was returning to the hospital two to three times per month. Moawad required surgery on his hip, and remained in the hospital for 2½ weeks following the shooting.

¶ 7

Because defendant never wielded the gun, he was tried on a theory of accountability on all four charges. Following the trial, the jury returned verdicts of guilty on the two counts of armed robbery. The jury returned verdicts of not guilty on the two counts of aggravated battery

with a firearm, though the verdict forms returned on those two counts mistakenly referred to charges of aggravated discharge of a firearm.

¶ 8 At sentencing, the defense called defendant's grandmother, Jacqueline Harper. Harper testified that she had raised defendant since he was two years old because his parents were not consistently around. Harper told the court that defendant—20 years old at the time of the incident—was a loving, helpful, and respectful young man. Defense counsel argued that defendant's age and difficult childhood should serve as mitigating factors in sentencing. The defense also argued that defendant's sentence should be proportionate to that of Campbell, who, the defense argued, was more culpable in the shootings than defendant. Campbell received an aggregate sentence of 51 years' imprisonment.

¶ 9 In aggravation, the State pointed to defendant's 2007 conviction for Class X armed robbery. That robbery also involved a handgun. Although defendant was only 15 years old at the time of his first armed robbery, he was tried as an adult and sentenced to eight years in prison. The armed robbery in this case took place seven months after defendant's release from prison, while he was on parole.

¶ 10 Prior to sentencing, the parties disputed whether the sentences for each count were mandatorily consecutive. Following the State's argument on this point, but before defendant's argument, the trial judge stated that whether the sentences were mandatorily consecutive was "immaterial \*\*\* because I was going to do it anyway based on \*\*\* the offenses." When defense counsel urged that the trial judge should hear all arguments before making any determination, the judge agreed: "[Y]our point is well taken, that I shouldn't make that determination if it's a discretionary call until after I hear everything. \*\*\* Your point is well taken, and I stand corrected on that." Later, before deciding the sentences would be discretionarily consecutive, the trial

judge reiterated: "I take [defense counsel's] point about I shouldn't have made that decision about whether to do discretionary sentencing until after I have heard everything. I have taken that to heart." Defense counsel went on to argue that the trial court should not hold against defendant the fact that he chose to proceed to trial. The trial judge twice assured defense counsel that he would never do this.

¶ 11 The parties agreed that, because of defendant's prior conviction, the statutory sentencing range would be between 6 and 60 years. The trial court also ruled that the mandatory 15-year firearm enhancement provision under section 18-2(b) of the Criminal Code of 1961 would apply to each count. 720 ILCS 5/18-2(b) (West 2010). The trial court found that there was "great bodily injury or severe bodily injury" with respect to both victims. Before delivering the sentence, the trial court stated:

"I think Mr. Carter who did the wrong thing in this incident could have done the right thing and had that opportunity to do so earlier in this case when Mr. Campbell's case was up for trial, and I saw how torn he was in front of me considering that and chose not to do the right thing, and there are consequences to that."

¶ 12 The court sentenced defendant to two terms of 22 years' imprisonment and found that, as a matter of discretion, the sentences should be served consecutively. When later pressed by the State to make the required finding that the imposition of consecutive sentences was done in order to protect the public from further criminal conduct by defendant, the trial judge replied: "I'll make that finding." Defendant did not object to these findings, nor did he request more detailed findings.

¶ 13 On June 22, 2012, defendant filed a motion to reconsider his sentence. In this motion defendant argued, *inter alia*, that his sentences should not run consecutively. The trial court

denied the motion. Defendant filed a notice of appeal.

¶ 14

## ANALYSIS

¶ 15

On appeal, defendant argues that the trial court abused its discretion in deciding that defendant's sentences would run consecutively. The State, meanwhile, contends that the trial court had no discretion to abuse because the sentences were mandatorily consecutive under section 5-8-4(d)(1) of the Unified Code of Corrections (Code). 730 ILCS 5/5-8-4(d)(1) (West 2010). A trial court's decision that sentences are not mandatorily consecutive is a matter of statutory construction, and therefore a question of law to be reviewed *de novo*. *People v. Harris*, 203 Ill. 2d 111 (2003). A trial court's discretionary imposition of consecutive sentences is reviewed for an abuse of that discretion. *People v. Buckner*, 2013 IL App (2d) 130083.

¶ 16

### I. Mandatory Consecutive Sentences

¶ 17

The statute governing the imposition of consecutive sentences contains a number of exceptions to the general rule that sentences shall run concurrently. 730 ILCS 5/5-8-4 (West 2010). In particular, a trial court must impose consecutive sentences when "[o]ne of the offenses for which the defendant was convicted was first degree murder or a Class X or Class 1 felony and the defendant inflicted severe bodily injury." 730 ILCS 5/5-8-4(d)(1) (West 2010). Although the trial court in this case ruled that defendant's sentences were discretionarily consecutive, this court has the power to find that they are mandatory. *People v. Arna*, 168 Ill. 2d 107 (1994).

¶ 18

Defendant was found guilty on two counts of armed robbery, a Class X felony (720 ILCS 5/18-2(a)(2), (b) (West 2010)). His sentences on those two counts would therefore be mandatorily consecutive if he inflicted severe bodily injury. The question then becomes whether

defendant, who was tried on a theory of accountability, could be said to have inflicted severe bodily injury for the purpose of the consecutive sentencing provision.

¶ 19 In *People v. Rodriguez*, 229 Ill. 2d 285 (2008), the Illinois Supreme Court discussed the application of accountability theory to the consecutive sentencing statute. Reaffirming its holding in *People v. Sangster*, 91 Ill. 2d 260 (1982), the supreme court held that if a defendant is legally accountable for his accomplice's infliction of severe bodily injury, that provision of the consecutive sentencing statute is satisfied. *Rodriguez*, 229 Ill. 2d 285.

¶ 20 The Illinois accountability statute provides that:

"[a] person is legally accountable for the conduct of another when:

\* \* \*

(c) either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2010).

The supreme court has held that " 'the word 'conduct' encompasses any criminal act done in furtherance of the planned and intended act.' " *Rodriguez*, 229 Ill. 2d at 291 (quoting *Sangster*, 91 Ill. 2d at 265, quoting *People v. Kessler*, 57 Ill. 2d 493, 497 (1974)).

¶ 21 In the present case, defendant's sentences were mandatorily consecutive. First, there can be no disputing that each of the victims suffered severe bodily injuries. Aldick's injuries were gruesome, resulting in permanent loss of portions of multiple internal organs. After initially spending more than a month in the hospital, his hospital visits continued regularly at least through the time of defendant's trial. Although the consecutive sentencing statute only requires that one offense result in severe bodily injury, it should be noted that Moawad's injuries were

also severe. The gunshot wound to Moawad's hip required surgery and an extended stay in the hospital. Illinois courts have found severe bodily injury in injuries far less severe than those suffered by the victims in this case. See, e.g., *People v. Primm*, 319 Ill. App. 3d 411 (2000) (finding that victim shot in back of thigh satisfied statutory requirements for consecutive sentences).

¶ 22 Following trial, the jury received instructions as to the armed robbery charges that contained three propositions that needed to be proven beyond a reasonable doubt in order to find defendant guilty. The third proposition required the jury to find "that the defendant or one for whose conduct he is legally responsible carried on or about his person a handgun or was otherwise armed with a handgun at the time of the taking." Because there was no evidence that defendant ever carried the handgun, the jury's guilty verdict on the armed robbery counts necessarily implies that the jury found defendant to be legally responsible for Campbell's conduct. Such a conclusion is supported by the testimony of both victims, which indicated that defendant was an active participant in the robbery. Indeed, defendant concedes in his reply brief that the guilty verdicts for armed robbery, standing alone, would make his sentences mandatorily consecutive under *Rodriguez*, 229 Ill. 2d 285.

¶ 23 Defendant argues, however, that the jury's acquittals on the counts of aggravated battery with a firearm, when combined with the guilty verdicts on the armed robbery counts, mean that the jury found defendant not to be legally accountable for the shootings. This argument fails as a matter of logic.

¶ 24 The jury was instructed that two propositions must be proven beyond a reasonable doubt in order to find defendant guilty of aggravated battery with a firearm: (1) "that the defendant or one for whose conduct he is legally responsible knowingly caused injury to [the victim];" and (2)

"that the defendant or one for whose conduct he is legally responsible did so by discharging a firearm." Defendant contends that the only grounds on which the jury could acquit would be a lack of legal responsibility for Campbell's conduct.

¶ 25 This argument fails to consider other possibilities for the acquittals. For example, the jury may have found that elements of the offense other than legal accountability were not satisfied. The jury's acquittal may also have been motivated by outside factors, such as confusion over the mislabeled verdict forms or juror lenity. See *United States v. Powell*, 469 U.S. 57 (1984) (discussing the possibility of jury lenity as a rationale for rule barring defendants from challenging inconsistent verdicts).

¶ 26 Numerous Illinois cases caution us against speculating as to the rationale underlying a jury's verdicts. See, e.g., *People v. Mack*, 167 Ill. 2d 525 (1995); *People v. Racanelli*, 132 Ill. App. 3d 124 (1985). While defendant cites these same cases approvingly, he nevertheless asks this court to accept his own speculation as to the reasons for the jury's acquittals. But courts have cautioned against such speculation for good reason. While guilty verdicts may lead logically to certain inferences—that each element of the offense has been satisfied, for example—a jury may return a verdict of not guilty for any number of reasons. As the Supreme Court reasoned in *Powell*, "[i]t is equally possible that the jury, convinced of guilt, properly reached its conclusion on [one] offense, and then through mistake, compromise, or lenity arrived at an inconsistent conclusion on the [other] offense." *Powell*, 469 U.S. at 65.

¶ 27 The record in this case provides sufficient basis to conclude that defendant aided Campbell in a robbery, that Campbell's use of a firearm was done in furtherance of that robbery, and that the robbery resulted in severe bodily injury to both Aldick and Moawad. The jury's acquittal of defendant on two counts of aggravated battery with a firearm does nothing to upset

these conclusions. Because consecutive sentences were therefore mandated by section 5-8-4(d)(1) of the Code, the trial court did not err in making defendant's sentences run consecutively. 730 ILCS 5/5-8-4(d)(1) (West 2010). Indeed, the trial court had no discretion to do otherwise.

¶ 28

## II. Discretionary Consecutive Sentences

¶ 29

Though the holding that defendant's sentences were mandatorily consecutive is dispositive, this court feels compelled to address the issue of abuse of discretion. Even if consecutive sentences were not found to be mandatory, the trial court did not err in ruling that the sentences would run consecutively as a matter of discretion.

¶ 30

Even when consecutive sentences are not mandated by statute, the trial court retains discretion to impose consecutive sentences when certain conditions are met. Under section 5-8-4(c)(1) of the Code, a trial court may impose consecutive sentences

"[i]f, having regard to the nature and circumstances of the offense and the history and character of the defendant, it is the opinion of the court that consecutive sentences are required to protect the public from further criminal conduct by the defendant, the basis for which the court shall set forth in the record." 730 ILCS 5/5-8-4(c)(1) (West 2010).

¶ 31

Defendant puts forth a number of arguments that the trial court abused its discretion in imposing consecutive sentences, two of which merit consideration here. Defendant first argues that the trial court's cursory finding of a need to protect the public, made only when the State requested, fails to satisfy the statutory requirement of findings set forth in the record. In *People v. Hicks*, 101 Ill. 2d 366 (1984), however, the supreme court held that it was not strictly necessary for the trial court to recite the exact statutory language when sentencing a defendant to discretionary consecutive sentences. The trial court stated, "What is required is that the record show that the sentencing court is of the opinion that a consecutive term is necessary for the

protection of the public.' " *Id.* at 375 (quoting *People v. Pittman*, 93 Ill. 2d 169 (1982)). Though the assistant State's Attorney recited the actual language, the court left no doubt that it agreed.

¶ 32 Defendant also argues that the trial court impermissibly considered his refusal to accept the State's plea offer in sentencing him. Defendant contends that the court's comment that he "chose not to do the right thing, and there are consequences to that" references this consideration. Even accepting defendant's interpretation of the trial court's comments *arguendo*, defendant's argument fails. Inappropriate remarks from a trial court alone are not grounds to disturb a sentence on review. *People v. Capon*, 23 Ill. 2d 254 (1961). In determining whether a sentencing court impermissibly considered a defendant's assertion of his right to a jury trial, courts will examine the aggravating factors on the record. *People v. Corrigan*, 129 Ill. App. 3d 787 (1985). Furthermore, "[w]hether the sentence was improperly imposed must be determined by considering the entire record, not by isolating a few words or statements of the court." *People v. Latta*, 304 Ill. App. 3d 791, 805 (1999).

¶ 33 The aggravating factors in this case are undeniable. Defendant had demonstrated a history of armed violence. He had only been out of jail for seven months before committing the instant offense. The trial court agreed that the public needed to be protected from further criminal activity by defendant. The trial court also made perfectly clear that it would not punish defendant for asserting his right to a jury trial. Nothing else on the record indicates that the court was punishing defendant for invoking his rights. Finally, it should also be noted that while most cases accusing trial courts of impermissible considerations involve a defendant who has received the maximum sentence, see, e.g., *People v. Moriarty*, 25 Ill. 2d 565 (1962), the sentences imposed on defendant in this case are significantly less than what he faced, even when served consecutively. Defendant will serve 44 years in prison, although he could have been imposed as

many as 75 years through concurrent sentences and as many as 150 years through consecutive sentences.

¶ 34 The consecutive sentences issued to defendant were made mandatory by statute. It is noted that even if consecutive sentences had not been mandatory, the trial court did not abuse its discretion. Because the trial court correctly imposed consecutive sentences on defendant, there is no cause for remand.

¶ 35 CONCLUSION

¶ 36 The judgment of the circuit court of Peoria County is affirmed.

¶ 37 Affirmed.