

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Damarion J. Moore,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

February 9, 2024

Court of Appeals Case No.
23A-CR-392

Appeal from the Marion Superior
Court

The Honorable Shatrese M.
Flowers, Judge

Trial Court Cause No.
49D28-2001-MR-1802

Memorandum Decision by Judge Pyle

Judges Vaidik and Mathias concur.

Pyle, Judge.

Statement of the Case

[1] Damarion Moore (“Moore”) appeals his convictions, following a jury trial, of two counts of murder.¹ His sole contention is that the trial court abused its discretion when it admitted into evidence a photo array. Concluding that any error in the admission of this evidence was harmless because the conviction was supported by substantial independent evidence of Moore’s guilt and that this evidence was cumulative of other properly admitted evidence, we affirm Moore’s convictions.

[2] We affirm.

Facts

[3] Moore and Shaughnje Scott (“Scott”) began dating in 2014, and their son, J.M. (“J.M.”) was born in September 2016. Three years later, in September 2019, Moore and Scott ended their relationship, and Moore moved in with his mother, Kasenya Dye (“Moore’s mother”), in an apartment on the westside of Indianapolis.

[4] In early January 2020, twenty-seven-year-old Moore sent twenty-two-year-old Scott a series of threatening text messages. Those messages provide, in relevant part, as follows:

¹ IND. CODE § 35-42-1-1.

[S]ince you feel you can waste my time and run off, you don't get to have a love life. Whoever new you bring in the picture getting smoked, and that's on our son.

* * * * *

You wanted this life so bad, so now you getting it. I'm not making shit easier for you no more.

* * * * *

I wanted you. And if you choose someone instead of me, they're dead. It's simple.

* * * * *

You don't get it. Any N-word you get caught . . . out with is dead. You shouldn't of wasted my fucking time. Now, you got to deal with the consequences.

* * * * *

I'm never going to be at peace with the fact you wasted five years of my life and have the audacity to just walk away.^[2]

(Tr. Vol. 4 at 90-92, 94).

[5] Also, in early January 2020, Moore's mother frequently cared for J.M. while Scott worked. Scott typically picked up J.M. at Moore's mother's apartment between 5:30 and 5:45 a.m. when Scott got off work. On January 8, 2020, Moore's mother, who had to be at work at 6:00 a.m., became concerned when Scott failed to pick up J.M. Scott usually contacted Moore's mother if she was

² The State read the text messages at trial and used the term "N-word." (Tr. Vol. 4 at 92).

running late. Moore's mother made several attempts to contact both Scott and Moore, and when she was unable to reach them, Moore's mother contacted the police. Although a police officer was dispatched to Moore's mother's home, the officer told Moore's mother that there was nothing that he could do because Scott and Moore were both adults. Moore's mother eventually went to work and apparently left J.M. in the care of someone in her home.

[6] Later that morning, in another apartment complex, twenty-two-year-old Chrishaun Snelling ("Snelling") was talking with his mother, Alvenia Smith ("Smith"), when his phone rang. Snelling checked his phone and told Smith that it was a girl and that she wanted Snelling to go outside. Snelling further told Smith, "I'll be right back, momma, I'm going to see what she wants." (Tr. Vol. 2 at 237). Smith heard Snelling walk down the stairs to the apartment building's main door and open it. Immediately thereafter, Smith heard five gunshots. Smith looked out her front door, saw Snelling facedown on the ground, and called 911. Medics transported Snelling to the hospital, where he died from the gunshot wounds.

[7] Shortly thereafter, Grant Jones ("Jones") was driving into the apartment complex where Snelling had just been shot when he noticed "a young man running[.] And he was trying to put a pistol in a red bag, and trying to climb [a] fence" into another apartment complex. (Tr. Vol. 4 at 62-63). As Jones drove past the young man, he turned and looked at Jones, and Jones was able to see the young man's face. When Jones noticed the police presence in the

apartment complex, Jones approached an officer and told him about the young man who he had just seen.

[8] In the meantime, Indianapolis Metropolitan Police Department Homicide Detective Charles Benner (“Detective Benner”) and Crime Scene Specialist Christine Hagan (“CSS Hagan”) both responded to the crime scene. CSS Hagan collected five fired cartridge casings, a fired bullet, and a fired bullet jacket. Detective Benner noticed Snelling’s cell phone lying on the ground next to where Snelling had been shot and took it back to the police station to determine the number that had called Snelling that morning. Detective Benner retrieved the telephone number from Snelling’s phone, ran it through a public access app, and determined that it belonged to Moore.

[9] At approximately 1:00 p.m. that day, Moore’s mother returned home from work and was surprised to see that J.M. was still there. After unsuccessfully attempting to contact both Moore and Scott by telephone, Moore’s mother drove to Scott’s apartment complex, where she noticed Scott’s car in the parking lot. Moore’s mother contacted the police again, but they did not enter Scott’s apartment. Later that day, Moore’s mother received a call from Moore, who said that “he was sorry[]” and then hung up the telephone. (Tr. Vol. 3 at 76).

[10] At 5:00 p.m. that afternoon, Detective Benner spoke with Jones about the man with the gun whom Jones had seen in Snelling’s apartment complex after Snelling had been shot. Detective Benner told Jones that he was going to show

him a photo array with six photographs of individuals with similar characteristics. Detective Benner also instructed Jones to look at the photographs and to see if he recognized anyone in reference to this incident. Detective Benner further told Jones that the person involved in the case might or might not be included in the photo array. After looking at the photo array, Jones circled and initialed Moore's photograph and told Detective Benner that Moore was the young man who he had seen in Snelling's apartment complex.

[11] The following morning, January 9, 2020, Moore's mother contacted the police again because she had still not been able to reach Scott. The police went to Scott's apartment and discovered her dead in her bed. She had been shot eleven times and three of those shots had been to Scott's head. CSS Hagan collected fired cartridge cases, bullets, and bullet fragments from the scene.

[12] On January 15, 2020, the State filed an information charging Moore with two counts of murder. Two days later, United States Marshals Service Task Force Officers Robert Sumption ("Officer Sumption") and Patrick Carley ("Officer Carley") arrested Moore in Champaign, Illinois. Specifically, Officer Sumption and Officer Carley found Moore hiding behind a projection screen in a family member's garage. As the officers were handcuffing Moore, he said "that he wished [the officers] would've just killed him." (Tr. Vol. 3 at 200). During a search of the garage after Moore's arrest, Officer Sumption found a handgun in the area where Moore had been found hiding.

[13] In January 2022, in preparation for trial, Moore took Jones' deposition. During the deposition, Jones stated that as he was driving into the apartment complex on January 8, 2020, he had noticed a young man running from the complex. Jones further explained that the young man had been trying to put a handgun in a red bag. As Jones had driven past the young man, he had turned around and had looked at Jones. When Jones saw the police presence in the apartment complex, he had approached an officer and had told him about the young man. According to Jones, later that day, he had looked at a photo array and identified one of the photographs in the photo array, circled the photograph, and placed his initials on it. In his deposition, Jones did not specifically state that the photograph that he had circled was Moore's.

[14] The jury heard the facts regarding the offenses as set forth above during Moore's three-day trial in January 2023. Also at trial, Dr. Matthew Cain, a forensic pathologist testified that the manner of both Scott's death and Snelling's death was homicide. Further, IMPD Digital Forensics Unit Detective Jason Hayes ("Detective Hayes"), who specializes in cellular analysis and mapping, testified that he had performed a cellular analysis of Moore's cell phone activity from 6:00 a.m. until 11:00 a.m. on January 8, 2020. According to Detective Hayes, at 7:58 a.m., Moore's cell phone had made a telephone call that had bounced off a tower near Scott's apartment. At 8:21 a.m., Moore's cell phone had made a call that had bounced off a tower near Snelling's apartment. Thereafter, the cell phone had moved west on I-74 towards Illinois.

[15] In addition, Michael Ray Putzek (“Putzek”), a forensic scientist who specializes in firearms identification and who works at the Indianapolis Marion County Forensic Services Agency (“the IMCFSA”), testified that “all fired cartridge casings[,]” bullets, and bullet fragments found at the scene of both murders had been fired from the gun that had been found next to Moore in the Illinois garage. (Tr. Vol. 4 at 24). Lastly, Tanya Fishburn (“Fishburn”), who performs DNA testing at the IMCFSA, testified that she had developed a DNA profile from “swabs taken from the unfired cartridges that were found in the magazine inside the handgun” found next to Moore in the Illinois garage. (Tr. Vol. 4 at 3-4). According to Fishburn, that DNA profile matched Moore’s DNA profile.

[16] Also, at trial, the trial court found that Jones was unavailable and allowed the State to read Jones’s deposition into evidence over Moore’s objection. Following the reading of Jones’s deposition, Detective Benner testified that when he had shown the photo array to Jones, Jones had selected a photograph in the photo array, circled it, and placed his initials on it. Detective Benner further testified that he had also initialed the photo array and written on it the date and time. In addition, Detective Benner testified, without objection, that Jones had circled Moore’s photograph. Detective Benner also identified Moore in court as the person whom Jones had identified in the photo array. Also, during Detective Benner’s testimony, the trial court admitted the photo array into evidence over Moore’s hearsay objection.

[17] During closing argument, the State argued as follows:

[Moore] executed [Snelling] that morning. I don't know why, but I would submit to you that even though the State doesn't have to prove motive, [Moore] must have thought that something was going on between [Snelling] and [Scott]. He must have because [Snelling] was executed. . . . [Snelling] was shot . . . within seconds of coming out that door.

(Tr. Vol. 4 at 123).

[18] After hearing the evidence, the jury convicted Moore of both counts of murder. Following a sentencing hearing, the trial court sentenced Moore to an executed term of fifty-eight (58) years for each conviction and ordered the sentences to run consecutively to each other for an aggregate sentence of 116 years.

[19] Moore now appeals his convictions.

Decision

[20] Moore's sole contention is that the trial court abused its discretion when it admitted the photo array into evidence. Moore specifically contends that "[t]he trial court erred in admitting a photo array containing Moore's photo that was circled by a witness who did not testify at trial because such constitutes inadmissible hearsay." (Moore's Br. 11).

[21] A trial court has broad discretion to admit evidence, including purported hearsay. *Blount v. State*, 22 N.E.3d 559, 564 (Ind. 2014). "We therefore disturb its ruling only if it amounts to an abuse of discretion, meaning the court's decision is clearly against the logic and effect of the facts and circumstances or it is misrepresentation of the law." *Id.*

[22] Further, even if the trial court abuses its discretion in admitting hearsay evidence, the erroneous admission of hearsay evidence does not require reversal unless it prejudices the defendant's substantial rights. *Id.* To determine whether an evidentiary error was prejudicial, we assess the probable impact that the evidence had upon the jury in light of all the other evidence that was properly presented. *Id.* "If we are satisfied the conviction is supported by independent evidence of guilt such that there is little likelihood the challenged evidence contributed to the verdict, the error is harmless." *Id.* In addition, any error in the admission of evidence is not prejudicial, and is therefore harmless, if the same or similar evidence has been admitted without objection or contradiction. *Hogland v. State*, 962 N.E.2d 1230, 1238 (Ind. 2012).

[23] Here, we need not determine whether the trial court abused its discretion in admitting the photo array into evidence because there was substantial evidence of Moore's guilt apart from the photo array. Specifically, a few days before the murders, Moore sent threatening text messages to Scott. Specifically, Moore told Scott that he would never be at peace with the fact that she had ended their five-year relationship and that he would kill anyone with whom she became involved. Further, Moore's cell phone placed him at the scene of both murders, and the last number that called Snelling before his murder and led him to walk outside to his execution had belonged to Moore.

[24] In addition, Moore called his mother after the murders, told her that he was sorry, and hung up. Moore was eventually arrested in Illinois, where he was found hiding in a family member's garage. As he was being handcuffed, he told

the officers that he wished that they had just killed him. Further, officers found a gun in the area where Moore had been hiding. That gun had fired all cartridge casings, bullets, and bullet fragments that CSS Hagan had found at the scene of both murders. Also, a DNA profile developed from swabs taken from the unfired casings found in the magazine inside the handgun matched Moore's DNA profile. In addition, the photo array was cumulative of Detective Benner's testimony that Jones identified Moore in the photo array.

[25] Because Moore's conviction is supported by substantial independent evidence of his guilt and because the photo array was cumulative of other evidence properly before the trier of fact, we conclude that any error in the admission of this evidence was harmless.

[26] Affirmed.

Vaidik, J., and Mathias, J., concur.