

**STATE OF MICHIGAN**

**COURT OF APPEALS**

PEOPLE OF THE STATE OF MICHIGAN,	UNPUBLISHED
Plaintiff-Appellee,	September 21, 2001

v

CHRISTOPHER W. HYNES,	No. 222314
Defendant-Appellant.	Clinton Circuit Court
	LC No. 99-006608-FC

Before: O'Connell, P.J., and White and Smolenski, JJ,

PER CURIAM.

Defendant appeals as of right from his conviction of first-degree murder, MCL 750.316, entered after jury trial. We affirm.

The prosecutor charged defendant with first-degree premeditated murder, MCL 750.316(1)(a), first-degree felony murder, MCL 750.316(1)(b), and conspiracy to commit murder, MCL 750.157(a).<sup>1</sup> The charges arose from the stabbing death of Cassandra Sandborn and the theft of her vehicle on December 17, 1998. Defendant was sixteen years old when the crime occurred. The prosecutor elected to charge defendant as an adult in circuit court pursuant to the automatic waiver process. MCL 600.606; MCL 764.1f. The jury convicted defendant of first-degree premeditated murder and first-degree felony murder. At sentencing, the trial court indicated that the judgment of sentence would reflect one conviction of first-degree murder supported by two theories. The trial court imposed the mandatory sentence of life imprisonment without the possibility of parole, MCL 750.316(1); MCL 769.10, and granted defendant credit for 271 days served.

On appeal, defendant argues that Michigan's automatic waiver process violates federal and state guarantees of due process, US Const, Ams V, XIV; Const 1963, art 1, § 17, federal and state guarantees of equal protection, US Const, Am XIV; Const 1963, art 1, § 2, and the separation of powers doctrine, Const 1963, art 3, § 2. We review constitutional questions de novo on appeal. *People v Swint*, 225 Mich App 353, 364; 572 NW2d 666 (1997). Defendant's

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<sup>1</sup> The charge of conspiracy to commit murder was not presented to the jury. After sentencing, the trial court granted the prosecution's motion for an order of nolle prosequi as to that charge.

arguments regarding the constitutionality of the automatic waiver process were squarely addressed and rejected in *People v Conat*, 238 Mich App 134, 605 NW2d 49 (1999). That decision has precedential effect, MCR 7.215(C)(2).

Defendant next contends that the trial court erroneously denied his motion for a mistrial. We review a trial court's decision on a motion for mistrial for an abuse of discretion. *People v Cunningham*, 215 Mich App 652, 654; 546 NW2d 715 (1996). An abuse of discretion exists when an unprejudiced person, considering the facts on which the trial court acted, would conclude that there was no justification or excuse for the ruling made. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

During defendant's trial, the prosecutor called the victim's mother as a witness. The prosecutor showed the witness a picture of the victim, taken during her senior year of high school. The prosecutor neither introduced the photograph into evidence nor published it to the jury. The witness began to cry upon seeing her daughter's picture. Several spectators also reacted emotionally. The trial court immediately called a recess, excused the jury, and requested that the prosecutor move to other matters as expeditiously as possible. When proceedings resumed, the prosecutor asked no further questions concerning the photograph. At the close of the prosecution's case defendant moved for a mistrial, contending that the display of the photograph produced an emotional reaction that resulted in unfair prejudice. The trial court denied the motion, finding that the display of emotion was neither gratuitous nor designed to enlist the sympathy of the jury.

A photograph of a crime victim is admissible where it is substantially necessary or instructive to show material facts or conclusions, and is not calculated to excite passion or prejudice. *People v Falkner*, 389 Mich 682, 685; 209 NW2d 193 (1973). First, the trial court must determine whether the photographs are relevant under MRE 401. Second, the trial court must determine whether the evidence should be excluded under MRE 403 because the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. *People v Mills*, 450 Mich 61, 66; 537 NW2d 909 (1995), modified 450 Mich 1212 (1995).

We conclude that the prosecutor's use of the photograph to assist in identifying the victim was proper. The victim's mother was the only witness to testify from personal knowledge regarding the victim's identity. Further, the display of emotion was not gratuitous, and was immediately halted by the trial court. No unfair prejudice occurred. In any event, any error that may have resulted from display of the photograph was harmless in light of the overwhelming evidence of defendant's guilt. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999). We conclude that the trial court did not abuse its discretion when it denied defendant's motion for mistrial.

Affirmed.

/s/ Peter D. O'Connell

/s/ Helene N. White

/s/ Michael R. Smolenski