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SIXTH DIVISION
DECEMBER 23, 2011

No. 1-10-1553

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.
)	
vs.)	No. 09 CR 3450 (02)
)	
LORENZO BARRIOS,)	Honorable
)	James Michael Obbish,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE ROBERT E. GORDON delivered the judgment of the court. Justices Garcia and Lampkin concurred in the judgment.

ORDER

¶ 1 **Held:** Although testimony at a suppression hearing is limited to the events surrounding the search and seizure when a defendant testifies, he subjects himself to impeachment of relevant testimony, and therefore, the failure of his attorney to object is not ineffective assistance of counsel.

¶ 2 Following a joint bench trial on March 4, 2010, defendants Anastacio Esparza and Lorenzo Barrios were both found guilty of delivery of a controlled substance in excess of 900 grams and possession of a controlled substance with the intent to deliver in excess of 900 grams.¹ On April 23, 2010, after hearing aggravation and mitigation, the trial court sentenced

¹ Co-Defendant Anastacio Esparza is not subject to this appeal.

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defendant to 18 years in the Illinois Department of Corrections and denied his posttrial motion for a new trial. Defendant now appeals, arguing (1) that defendant's trial counsel provided ineffective assistance by failing to properly object to the State's cross-examination and by withdrawing a valid objection to the impeachment of defendant at defendant's suppression hearing, or, in the alternative, (2) that the trial court erred by overruling defense objections and considering cross-examination testimony beyond the scope of the motion to quash arrest and suppress evidence.

¶ 3 BACKGROUND

¶ 4 Prior to a bench trial on multiple drug charges, defendant and co-defendant Anastacio Esparza, filed motions to quash arrest and suppress evidence.

¶ 5 At the suppression hearing, Chicago police officer Brian Luce testified that on January 26, 2009, at approximately 11:30 a.m., he was conducting a narcotics investigation in a mall parking lot. While conducting that investigation, he noticed that the driver of a blue Dodge van was a man he recognized from a prior investigation involving the distribution of large amounts of narcotics. The driver was known as "the walkaway" because in September of 2006, after a reliable confidential informant gave information about the man, officers conducted surveillance and followed him to an address at South Narragansett, but subsequently he had not been observed again. Officer Luce thought that the man probably sensed he was under surveillance and discovered that his business was under investigation. Officer Luce ran the blue Dodge van's license plate and found that it was registered to that same address on South Narragansett. Luce then confirmed with Officer Moravec that his recollection of the driver and address was correct. Moravec also testified at the suppression hearing and stated that he told Officer Luce they had

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recent information from a reliable informant that there were large amounts of money collected from that location on South Narragansett as a result of drug activity.

¶ 6 While under surveillance, “the walkaway” and a male passenger made some phone calls and then drove to a parking lot of a nearby restaurant where they made additional phone calls. A short time later, codefendant Esparza entered the back of the blue Dodge van and conversed with the men for approximately five minutes. Officer Luce opined that he believed he was watching a “narcotics type meet” because the blue Dodge van was parked in the very back of the parking lot a large distance from the restaurant entrance. The three men drove in the blue Dodge van to another restaurant where the van’s two original occupants, including “the walkaway,” exited the vehicle and went into the restaurant. Esparza moved to the driver’s seat and drove from the area. Officer Luce testified that he had observed over a hundred “car switches,” which had led to hundreds of narcotics seizures and arrests, so he maintained surveillance on the blue Dodge van.

¶ 7 While Officer Luce followed, Esparza drove the blue Dodge van to a park and circled the area several times. He called this driving “dusting [one’s] self ” or “cleaning off,” a method used to detect any police surveillance or anyone who might want to rob the driver. Officer Luce testified that he had observed this behavior between 50 and 100 times and “[a]most every time” the individuals stopped were involved in narcotics.

¶ 8 Esparza eventually drove the blue Dodge van into an alley alongside a house located on South Springfield and stopped at the rear of a residence. Officer Luce testified that he parked his unmarked vehicle directly across from the mouth of the alley. That is when he observed the defendant exit the rear of the house on South Springfield carrying “a weighted squared off black duffle bag,” that looked like a hockey bag. Defendant placed the bag down on the ground,

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opened the sliding passenger door of the blue Dodge van, picked up the large duffle bag, placed the bag in the back of the van, and closed the van door. Esparza immediately drove away when the van door closed without defendant and Esparza ever speaking.

¶ 9 Officer Luce testified that he informed Officers Moravec and Colon over the radio that a heavy black duffle bag was placed into the blue Dodge van, and that the van was traveling east through the alley south of 26th street. Officer Luce stated that he remained in his vehicle on South Springfield. Less than five minutes later, Moravec informed Luce that he stopped the blue Dodge van, driven by Esparza, and after obtaining Esparza's oral consent to search the van, found the black duffel bag filled with "a bunch of bricks of cocaine." Officer Moravec testified that he knew immediately when the blue Dodge van's door opened and he smelled the acetone that there was cocaine in the bag. Approximately five minutes later, Officer Luce observed defendant exit from the rear of the house on South Springfield, walk across the alley into the south section of businesses on 26th street and enter a white cargo van. As the white cargo van pulled out, Officer Luce backed his vehicle towards the white cargo van and blocked defendant from exiting the alley. Officer Luce testified he exited his vehicle with his gun at his side, yelled "Chicago police," and told defendant to exit the white cargo van. Defendant came out of the white cargo van with his hands up and asked Officer Luce to show his identification. The officer showed his identification and then informed defendant that he was under arrest for delivery of a large quantity of cocaine. He handcuffed defendant, walked defendant to his unmarked vehicle and advised him of his *Miranda* rights. Officer Luce testified that defendant confirmed that he understood each right and had no communication trouble.

¶ 10 According to Officer Luce's testimony, defendant told the officer that he was not the

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kingpin and that he only “sat” on the drugs. Defendant told Luce that there was approximately 50 to 60 kilograms more cocaine in the basement, but that it did not belong to him. Officer Luce told defendant that he could obtain a search warrant, or defendant could sign a consent to search form. According to Luce’s testimony, defendant signed the consent to search form because the house belonged to his parents and he did not want his parents’ property disturbed. At this time, additional officers had arrived and defendant walked them into the basement of the house on South Springfield. Defendant showed the officers a dresser in the basement with a key located under newspapers that would open the door to the room where the cocaine was stored. Then, defendant pointed out several boxes located behind his bedpost that contained 104 kilograms of suspected cocaine. After the search, defendant was transferred to the police station.

¶ 11 That evening, two Assistant State’s Attorneys “mirandized” defendant and obtained a handwritten statement from him. Defendant indicated in his statement that he signed the consent to search form and that he gave the police permission to search his house and his bedroom without a search warrant. Defendant also stated that he signed the consent form freely and voluntarily because he “knew it was the right thing to do”. Defendant’s statement to the Assistant State’s Attorneys also included the fact that he knew the duffle bag and the boxes had wrapped bricks of cocaine in them, but that he did not count the bricks or know the amount of cocaine.

¶ 12 Defendant’s testimony at the suppression hearing differed with Officer Luce’s testimony to the events that occurred after he placed the black duffle bag into the blue Dodge van and differed from his statement.

¶ 13 Defendant testified that after Esparza drove away, he went to the basement door to ensure

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that it was locked. Then, he walked through a gate adjacent to the house that led to the alley and continued walking towards Springfield and the front of the house where his white cargo van was parked. Defendant stated that he never made it to his white cargo van because after he walked approximately ten steps down the alley a vehicle drove toward him in reverse. That is when Officer Luce jumped out of his vehicle, pointed his weapon at defendant, and told him to put his hands up and turn around. According to defendant, approximately only 35 seconds had passed from the time defendant put the duffle bag in Esparza's blue Dodge van to the time he was approached by Office Luce. Defendant asked Office Luce for identification because the officer was in plain clothes, and Officer Luce responded that he would show his identification in a minute. According to defendant's testimony on direct-examination, Officer Luce searched defendant, asked him what was in the bag he placed in the blue Dodge van, and defendant responded that he did not know. After Officer Luce searched defendant, he then showed defendant his identification and handcuffed him. Defendant testified that while he was seated in the passenger seat of Officer Luce's vehicle, Luce stood outside talking on his radio. After approximately thirty to thirty-five minutes, another plain-clothes officer arrived. Defendant claimed on cross-examination that he signed a consent to search form only after Officer Luce told him that they were "going to tear the house up floor by floor" and arrest his parents and whoever else was in the house.

¶ 14 On cross-examination, the State sought to impeach defendant with statements he made to Officer Luce and his handwritten statement taken by the Assistant State's Attorneys. The cross-examination progressed as follows:

"THE STATE: You knew that duffle bag contained a substantial quantity

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of cocaine?

DEFENDANT: No.

THE STATE: You did not?

DEFENDANT: No.

THE STATE: What did you believe it contained?

DEFENDANT: I wasn't sure.

DEFENSE COUNSEL: Objection, Your Honor.

THE COURT: The answer may stand.

THE STATE: At some point in time, did you tell the officer prior to leaving the location *** that there was additional cocaine inside of your residence?

DEFENSE COUNSEL: Your Honor, I object at this time.

THE COURT: Well, overruled *** I am not going to be considering what was recovered with respect to the motion *** I think the facts and circumstances surrounding everything that led up to the recovery of all the evidence in this case is relevant so the objection will be overruled.

THE STATE: he said that he was going to search the house?

DEFENDANT: Basically yes.

THE STATE: And your parents' house?

DEFENDANT: Yes.

THE STATE: After he mentioned that to you, did you tell him that there

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was additional cocaine inside of the residence?

DEFENSE COUNSEL: I would have the same objection at this time. It's beyond what the court has indicated as to the sequence of events that had taken place prior to this search of the house.

THE COURT: But this is all conversation occurring prior to him signing the consent to search form.

DEFENSE COUNSEL: Okay. Based on that, I will withdraw my objection.

THE STATE: And you showed the officers where the additional contraband was?

DEFENSE COUNSEL: I object at this time, Judge. This goes beyond conversation to certain conduct.

THE COURT: Overruled.

THE STATE: And you signed the statement because the statement represented what you told the assistant state's attorney that evening about the events that had occurred that day?

DEFENSE COUNSEL: Your Honor, I object again, Judge. You know, we are going getting into the content of the confession, statement made inside of a confession. We seek to suppress. It's beyond the scope of our motion.

THE COURT: Well, it's not beyond the scope of your motion. It is the

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scope of your motion.

THE STATE: I believe that there are a number of statements contained inside of the statement that contradict the statement that's been made here today. That goes to the witness's credibility.

THE COURT: As to the extent that the statement which [defense counsel] has clearly seeking to suppress on behalf of his client has what could be amount – could amount to admissions of the conduct of defendant's behavior that evening with respect to the issues that are being addressed at the motion or that it contradicts or impeaches his testimony on the motion, the objection would be overruled.

It would be considered for that purpose. I am not going to consider the contents of the statement. Perhaps admitting as I imagine it must to some possessory interest to matters recovered during the course of the search.

Again, [defense counsel], I am not going to consider it for purposes of establishing possession but I am not going to consider it to the extent that there are statements contained within the statements which would be admissions or something with respect to questions that I am resolving at this point regarding the legalities of the search.

DEFENSE COUNSEL: I have no problem with that if counsel lays a foundation and he impeaches him. But that's not what he is doing. He is on discovery. He is asking questions about whether things were found, things that were said without laying a foundation for impeachment. If he is saying that he

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made a contradictory statements, he needs to get to the point.

THE STATE: I intend to do that right now.

THE COURT: The objection is overruled based on my statements.

THE STATE: On page 3 of this six page statement, it indicates that [defendant] states that he knew that the duffle bag and the boxes had wrapped bricks of cocaine in them but he did not want – that he did not count the bricks and does not know how much cocaine there was. Is that the statement that you made to the assistant state’s attorney statement on January 26th between 8:00 p.m. and 10:15 p.m. at the police headquarters *** in the City of Chicago, County of Cook?

DEFENDANT: I don’t recall.

THE STATE: You don’t recall making that statement. But that is contained in the statement, correct?

DEFENDANT: Yes.”

¶ 15 After hearing arguments, reviewing the transcripts, and reviewing the parties’ memorandum, the trial court denied defendant’s motion to quash arrest and suppress evidence, stating:

“Why do I believe [Officer Luce’s] version rather than perhaps [defendant’s] version? Well, very early in the cross-examination of [defendant], he lied to me. He lied under oath on one of the most - - on just a ridiculous point. He was asked if he knew what was in the bag, and he denied knowledge that he had placed or that there was 50 kilos of cocaine into the vehicle being driven by Mr. Esparza.

Now, if you are willing to lie under oath on something so simple, that obviously is something that needs to be taken into consideration when evaluating credibility. *** In any event, I found Lu[ce] and the other officers to have testified credibly. I did not find the testimony of Esparza to be anywhere near as credible. He didn't get caught in the giant lie like [defendant] did right at the beginning.”

¶ 16 At Esparza and defendant's bench trial, Officers Luce and Moravec testified consistently with their testimonies at the suppression hearing. At the end of the trial, defendants renewed their motions to quash arrest and the judge stood by his earlier denial of the suppression motions, and found both defendants guilty. The trial court denied defendant's posttrial motion for a new trial and sentenced him to 18 years in the Illinois Department of Corrections.

¶ 17 Defendant appeals arguing that counsel's failure to properly object to the State's introduction of irrelevant evidence constituted ineffective assistance of counsel. Defendant contends that the evidence at the suppression hearing presented a credibility contest between defendant and Officer Luce; and that on cross-examination, the State sought to elicit testimony and impeachment beyond the scope of the motion. Because counsel failed to properly object to the State's impeachment, and the judge relied on the impeachment testimony to find defendant's testimony incredible, counsel's performance was deficient and undermined the fairness of the suppression hearing.

¶ 18 Defendant also argues, in the alternative, that if defendant's counsel was not deficient, the trial court erred by overruling defense counsel's objections to the State's cross-examination, so long as those objections were sufficient, and erred by considering evidence beyond the scope

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of the motion to suppress.

¶ 19 ANALYSIS

¶ 20 Ineffective Assistance of Counsel

¶ 21 Whether counsel provided ineffective assistance is a mixed question of fact and law. *Strickland v. Washington*, 466 U.S. 668, 698 (1984). Thus, in reviewing claims of ineffective assistance of counsel, we use a bifurcated standard of review, wherein we defer to the trial court's findings of fact unless they are against the manifest weight of the evidence, but make a *de novo* assessment of the ultimate legal issue of whether counsel's actions support an ineffective assistance claim. *People v. Nowicki*, 385 Ill. App. 3d 53, 81 (2008) (citing *People v. Berrier*, 362 Ill. App. 3d 1153, 1166–67 (2006) and *People v. Davis*, 353 Ill. App. 3d 790, 794 (2004)).

¶ 22 The Illinois Supreme Court has held that, to determine whether a defendant was denied effective assistance of counsel, an appellate court must apply the two-prong test set forth in *Strickland*. *People v. Colon*, 225 Ill. 2d 125 (2007), citing *People v. Albanese*, 104 Ill. 2d 504 (1984) (adopting *Strickland*). Under the two-prong *Strickland* test, a defendant must prove both that (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defense. *Strickland*, 466 U.S. at 687; *Colon*, 225 Ill. 2d at 135; *Albanese*, 104 Ill. 2d at 526.

¶ 23 Under *Strickland*'s first prong, the defendant must prove that his counsel's performance fell below an objective standard of reasonableness "under prevailing professional norms." *Colon*, 225 Ill.2d at 135. Under the second prong, the defendant must show that, "but for" counsel's deficient performance, there is a reasonable probability that the result of the proceeding would have been different. *Colon*, 225 Ill.2d at 135. "A reasonable probability that the result would have been different is a probability sufficient to undermine the confidence in the outcome of the

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proceeding.” *Colon*, 225 Ill.2d at 135. To prevail, the defendant must satisfy both prongs of *Strickland*; failure to satisfy either prong precludes a finding of ineffective assistance of counsel. *Colon*, 225 Ill.2d at 135. On review, there is a presumption that defense counsel’s performance falls within the “wide range of reasonable professional assistance,” and is not deficient. *Strickland*, 466 U.S. at 688.

¶ 24 Strickland Prong I

¶ 25 Defendant claims that his counsel’s failure to consistently and repeatedly object to the State’s questioning at the suppression hearing, regarding the identity of the substance recovered and defendant’s written statement, was professionally unreasonable.

¶ 26 First, we address defendant’s argument that counsel failed defendant by not objecting to the State’s cross-examination. The thrust of defendant’s argument is that since the State could potentially use defendant’s testimony from the suppression hearing for impeachment purposes, defense counsel should have objected to the State’s questions concerning the content of the substance recovered in the bag and in defendant’s home. The failure to object also impacted defendant’s decision as to whether he should testify at trial, thus affecting his privilege against self-incrimination. See *Oregon v. Hass*, 420 U.S. 714 (1975); *Harris v. New York*, 401 U.S. 222 (1971); M. Graham, *Clearly & Graham’s Handbook of Illinois Evidence* §104.4, at p. 61 (9th ed. 2009) (adopted in Ill. R. Evid. 104(d)).

¶ 27 In support of its argument, the defendant cites *People v. Smith*, 67 Ill.App. 3d 952 (1978). In *Smith*, a defendant refused to answer questions on cross-examination regarding an illegal substance recovered from his vehicle by invoking his 5th Amendment Right against self-incrimination. *Smith*, 67 Ill.App. 3d at 957. The trial court summarily denied defendant’s

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motion to suppress evidence due to defendant's failure to answer questions on cross-examination; and defendant appealed. *Smith*, 67 Ill.App 3d at 957. The appellate court, sitting in the 5th District, held that the prosecution's inquiry on cross-examination of whether defendant knew what the substances were, or to whom they belonged, was neither within the scope of direct examination nor germane to the issues raised by the motion to suppress, as the sole issue raised in defendant's motion to suppress evidence was whether the warrantless search and seizure of defendant's vehicle was unreasonable. *Smith*, 67 Ill.App. 3d at 957. However, the court stated, "in overruling defense objections thereto, the lower court erred," although this error was determined to be harmless.

¶ 28 In the case at bar, the defendant argues that counsel should have persistently objected to the State's cross-examination questions regarding the identity of the recovered substance because, under *Smith*, timely objections to this line of questioning would have been sustained. We do not find defendant's argument persuasive because the case at bar is factually distinguishable from *Smith*. Although testimony at a hearing on a motion to suppress is limited to the events surrounding the search and seizure, when a defendant himself testifies at a suppression hearing he subjects himself to legitimate cross-examination, just as any other witness. *Smith* at 957. Unlike in *Smith*, here, the prosecution's inquiry on cross-examination was within the scope of direct examination because defense counsel elicited testimony on direct that defendant told Officer Luce he did not know what was in the bag. Thus, the State's cross-examination of defendant grew out of defendant's own testimony on direct-examination. Moreover, defense counsel objected to the State's line of questioning regarding what was in the black bag and whether defendant told Office Luce there was additional cocaine inside the home.

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Such objections were properly overruled by the trial court because not only did defendant's testimony on direct examination open the door to questions on the contents of the bag on cross-examination, the facts and circumstances surrounding everything that led up to the recovery of the drugs was relevant and within the scope of the direct examination.

¶ 29 Turning to defendant's second argument, defendant contends that counsel also acted unreasonably when he withdrew a valid objection to the State's impeachment of defendant because the impeachment issue was beyond the scope of the motion. Towards the end of cross-examination, the State began to question defendant about the statement he gave to the police following his arrest. Counsel objected that the contents of the written-statement was beyond the scope of the motion, and the State argued that there was information within the written-statement that went to defendant's credibility. The judge overruled the objection stating that to the extent the statement could contradict or impeach defendant's testimony, the objection would be overruled. Defense counsel responded that he had no problem if the State used the statement to impeach defendant by laying a proper foundation.

¶ 30 Defendant argues that the State's impeachment was beyond the scope of the motion because the statement was given after the search and arrest and because defendant made no challenge to the voluntariness of the statement. Defendant also argues that the State's impeachment exceeded the scope of the motion in that it introduced substantive evidence defendant was seeking to have suppressed. For all the above reasons the defendant claims the impeachment testimony was inadmissible; thus counsel acted unreasonably by assenting to the impeachment. See *People v. Sanchez*, 404 Ill. App. 3d at 15, 18 (2010) (defense counsel's failure to object to inadmissible evidence of defendant's prior drug conviction more than ten

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years old was deficient performance).

¶ 31 It is well established that a party may attack the credibility of a witness by impeaching the witness with evidence of prior inconsistent statements. *People v. Cruz*, 162 Ill. 2d 314, 358 (1994); Ill. R. Evid. 613(b). When prior inconsistent statements are made out of court, they are hearsay and thus inadmissible as substantive evidence, but the prior statement may be used for the sole purpose of impeaching and undermining the credibility of the witness. *People v. Smith*, 177, Ill. 2d 53, 83 (1997).

¶ 32 The State properly asked about defendant's handwritten statement because it affected defendant's credibility and undermined defendant's prior testimony that he did not know the duffle bag contained a substantial quantity of cocaine and that he was not sure what the bag contained. Moreover, we find defendant's argument that the prior inconsistent statement was admitted substantively unpersuasive. At no point during cross-examination was any part of defendant's handwritten statement admitted substantively. The only content of the statement that was specifically brought out was "that [defendant] knew that the duffle bag and the boxes had wrapped bricks of cocaine in them but [defendant] did not want – that [defendant] did not count the bricks and does not know how much cocaine there was." When the State asked defendant questions about the content of the statement itself, defense counsel objected. It was then made clear by the prosecutor that part of the handwritten statement contradicted the defendant's testimony. He stated, "[t]hat goes to the witness's credibility." The court then overruled the objection stating that the content of the statement would only be considered for the purpose of contradicting or impeaching defendant's testimony. Defense counsel then withdrew his objection to the impeachment of defendant. Defense counsel was not deficient because counsel is not required to perform a useless

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act of objecting to impeachment testimony when the objection would be overruled. See *People v. Peoples*, 377 Ill. App. 3d 978, 989 (2007).

¶ 33 Strickland Prong II

¶ 34 Since we do not find that counsel's performance fell below an objective standard of reasonableness, it is unnecessary to determine whether counsel's errors prejudiced defendant. As we stated *supra*, failure to satisfy either prong, and in this case the first prong, of *Strickland* precludes a finding of ineffective assistance of counsel. *Colon*, 225 Ill. 2d at 135.

¶ 35 II. Error by Circuit Court for considering evidence beyond the scope of cross-examination

¶ 36 In the alternative, defendant argues that even if counsel was not deficient, the trial court erred by admitting and considering improper evidence and asks this court to grant him a new suppression hearing. Defendant failed to raise this issue in his posttrial motion, but asks this court to review this claim under the plain error doctrine. Plain error may be invoked in criminal cases where a clear or obvious error occurred and (a) the evidence was closely balanced, or (b) the error was of such magnitude that the accused was denied a fair trial. *People v. Piatkowski*, 225 Ill. 2d 551, 564-65 (2007) (quoting *People v. Herron*, 215 Ill. 2d 167, 175 (2005)); *People v. Johnson*, 238 Ill. 2d 478, 486 (2010). Before invoking the plain error doctrine, defendant must first establish that an error actually occurred because "there can be no plain error if there is no error." *People v. Johnson*, 218 Ill. 2d 125, 139 (2005).

¶ 37 In the case at bar, the trial court's determination whether to allow the State's questioning was an evidentiary ruling; a trial court's evidentiary rulings are reviewed for an abuse of discretion. See *People v. Caffey*, 205 Ill. 2d 52, 89 (2001). "An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable

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person would take the view adopted by the trial court." *Caffey*, 205 Ill. 2d at 89 (citing *People v. Illgen*, 145 Ill. 2d 353, 364 (1991)).

¶ 38 For the same reasons discussed above, we do not find any error in the trial court's consideration of impeachment evidence. The trial court did not err when it allowed the State to ask defendant if he knew what was in the bag because the State's cross-examination of defendant grew out of defendant's own testimony on direct-examination when defendant testified that he told Officer Luce that he did not know what was in the bag. As stated *supra*, although testimony at a hearing for a motion to suppress is limited to the events surrounding the search and seizure, when a defendant testifies at a suppression hearing he subjects himself to complete cross-examination, just as any other witness, which includes impeachment of relevant testimony. *Smith*, 67 Ill. App. 3d at 957.

¶ 39 The State's questions with respect to whether defendant told the officers at the scene that there was additional cocaine in the home, and that defendant showed officers where the additional cocaine was located in the home, was properly admitted because it was conversation and activity that occurred prior to the search and arrest, and thus within the scope of the motion.

¶ 40 Additionally, as discussed above, the trial court did not err when it allowed the State to impeach defendant with defendant's prior inconsistent statements. The trial court clearly stated that it would only consider the statement for credibility purposes. The State followed through with its impeachment, which affected defendant's credibility.

¶ 41 The trial court did not err in admitting the evidence at issue and did not improperly consider such evidence in exercising its judicial discretion.

¶ 42 CONCLUSION

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¶ 43 Defendant was not denied effective assistance of counsel and the trial court did not consider improper evidence at defendant's suppression hearing. Defendant's request for a new trial and new suppression hearing was properly denied.

¶ 44 Affirmed.