

2011 IL App (1st) 091504-U
No. 1-09-1504

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FIRST DIVISION
August 8, 2011

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. 08 MC1 213647
)	
PERCY BELL MOORE,)	Honorable
)	Thomas More Donnelly,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Hall and Justice Rochford concurred in the judgment.

O R D E R

HELD: Defendant was not prejudiced by any error in the trial court's admission into evidence of a statement by defendant not disclosed by the State in discovery, where there was no indication that the non-disclosure was willful and the properly-admitted trial evidence against defendant was overwhelming.

¶ 1 Following a jury trial, defendant Percy Bell Moore was convicted of criminal trespass to real property and sentenced to 180 days in jail. On appeal, defendant contends that the trial court erred in allowing a witness to testify to an inculpatory statement by defendant when the statement had not been disclosed by the State in discovery.

¶ 2 Defendant was charged with criminal trespass to real property for entering land on May 16, 2008, specifically the studios and offices of WLS television (WLS) at 190 North State Street in Chicago (the Station), after being given notice that his entry was forbidden.

¶ 3 The State filed a motion *in limine* to admit other-crimes evidence: defendant's prior trespass at the Station on February 7, 2008, for which he was sentenced on May 16, 2008, the day of the instant alleged trespass, to two years' probation with a condition that he not contact WLS at the Station premises. The State argued that his statements in that trial indicated his intent to continue trespassing at the Station and thus that offense was relevant to show his knowledge that he was not welcome at the Station, his motive and intent, and his animosity towards WLS. The court partially granted the motion, allowing the State to mention that defendant (1) had been told on February 7, 2008, that he was not permitted on the Station premises, and (2) was under a court order not to contact WLS at the Station

premises, but not that he was arrested or convicted of an earlier trespass.

¶ 4 At trial, Erica Bautista testified that she was the security director at the Station and was there on February 7 when she saw defendant in the lobby of the Station. Bautista told defendant at that time that he was not allowed in the Station. On May 16, Bautista was present in court when the court ordered defendant to stay away from the Station.

¶ 5 Joseph Skala testified that he was a security guard at the Station and was on-duty there on May 16 when he saw defendant enter the Station lobby.¹ As Skala had been provided a photograph of defendant and told that he was not allowed into the Station, Skala approached defendant and asked him why he was there. At this point, defendant objected on the basis of "statements not tendered," and the court overruled. Skala testified that defendant replied that he was there because he wanted to be arrested. Skala told defendant that he was not allowed into the Station and told him to leave, but defendant replied that he was not going to leave and wanted to be arrested. Skala asked defendant if he was certain that he wanted to be arrested, as he would be arrested if he stayed. Defendant

¹Defendant objected at this point that Skala was not a disclosed witness, but the State pointed out that its discovery response stated that it could call any person named in a disclosed police report, as Skala was, and the court overruled the objection.

repeated that he wanted to be arrested. Skala frisked defendant and found no weapons, then had a co-worker phone the police. The police came and arrested defendant. On cross-examination, Skala clarified that the Station is not open to the public so that any person who entered the Station without a WLS employee identification or pass would be challenged upon entering the Station. Skala testified that, while he detained defendant, he would not have stopped defendant had he left the Station before the police arrived.

¶ 6 Defendant testified that he went to the Station on May 16, 2008, where a security guard told him to leave the premises. When asked if he told the guard that he wanted to be arrested, he did not answer the question. Defendant admitted that, prior to going to the Station on May 16th, a court had ordered him to stay away from the Station.

¶ 7 Following closing arguments, instructions and deliberation, the jury found defendant guilty. At the sentencing hearing, after evidence and arguments, the court sentenced defendant to 180 days in jail.

¶ 8 Defendant filed a post-trial motion, later amended, in which he challenged the partial grant of the other-crimes motion *in limine* and the admission of Skala's testimony regarding undisclosed statements by defendant. Following arguments, the court denied the motion, and this appeal timely followed.

¶ 9 On appeal, defendant contends that the trial court erred in allowing Skala to testify to an inculpatory statement by defendant -- that he wanted to be arrested -- when the statement had not been disclosed in discovery.

¶ 10 Illinois Supreme Court Rule 412(a)(ii) (eff. Mar. 1, 2001) provides that,

"Except as is otherwise provided in these rules as to matters not subject to disclosure and protective orders, the State shall, upon written motion of defense counsel, disclose to defense counsel the following material and information within its possession or control:

(ii) any written or recorded statements and the substance of any oral statements made by the accused or by a codefendant, and a list of witnesses to the making and acknowledgment of such statements."

All statements made by a defendant that might have a bearing on the defendant's guilt or innocence fall under this Rule. *People v. Sanchez*, 388 Ill. App. 3d 467, 473 (2009). The purpose of this Rule is to protect a defendant against surprise, unfairness,

and inadequate preparation, and to afford the defense an opportunity to investigate the circumstances surrounding the statement. *Sanchez*, 388 Ill. App. 3d at 473.

¶ 11 There are numerous sanctions available against a party that has failed to comply with discovery rules, including the granting of a new trial. Ill. S. Ct. R. 415(g) (eff. Oct. 1, 1971); *Sanchez*, 388 Ill. App. 3d at 473. Thus, failure to comply with discovery requirements does not necessarily mandate a new trial. *Sanchez*, 388 Ill. App. 3d at 473. We will find an abuse of discretion and impose an appropriate sanction only where the defendant is prejudiced by the discovery violation and the trial court failed to eliminate the prejudice. *Sanchez*, 388 Ill. App. 3d at 473. The factors we consider in determining whether a defendant suffered prejudice from the State's Rule 412(a)(ii) violation so that a new trial must be granted include (1) the closeness of the evidence, (2) the strength of the undisclosed evidence, (3) the likelihood that prior notice could have helped the defense discredit the evidence, and (4) the willfulness of the State in failing to disclose the evidence. *Sanchez*, 388 Ill. App. 3d at 473.

¶ 12 Here, it is not apparent from the record that any discovery violation by the State was willful. Skala testified that he asked defendant why he was at the Station, and when the ASA asked the obvious follow-up question of what defendant's

response had been, defendant made the overruled non-disclosure objection and Skala testified to defendant's statement. There is no indication that the State was aware in advance of the details of testimony by Skala, a WLS employee who made no written report to the police or State. Furthermore, that defendant wanted to be arrested is not an element of the offense of criminal trespass to real property, nor a proposition that the State had to prove. Instead, the elements of the offense -- that defendant entered the Station after receiving notice that his entry is forbidden (720 ILCS 5/21-3(a)(2) (West 2008)) -- were overwhelmingly shown by defendant's testimonial admissions as well as by properly-admitted evidence from the State's witnesses. Thus, the evidence was not close and the undisclosed evidence was not particularly strong. We conclude that defendant was not prejudiced by any discovery violation.

¶ 13 Accordingly, the judgment of the circuit court is affirmed.

¶ 14 Affirmed.