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2011 IL App (3d) 100197-U

Order filed October 27, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 12th Judicial Circuit,
Plaintiff-Appellee,)	Will County, Illinois,
)	
v.)	Appeal No. 3-10-0197
)	Circuit No. 06-CF-2113
JACOB PITTS,)	
)	Honorable
Defendant-Appellant.)	Amy Bertani-Tomeczak,
)	Judge, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court did not err in admitting statements by investigating officer concerning steps in his investigation of defendant.

¶ 2 Defendant Jacob Pitts was convicted by a jury of delivery of a controlled substance and sentenced to a 3-year term of probation. We affirm.

¶ 3 **FACTS**

¶ 4 Defendant Jacob Pitts was charged with unlawful delivery of a controlled substance. 720 ILCS 570/401(d) (West 2006). Pitts filed motions to suppress identification and to suppress

statements. Hearings ensued on his motions, where Jeffrey Purvis, a Will County sheriff's deputy, testified that he had relied on a confidential source, now deceased, to identify Pitts. According to Purvis, he accompanied his informant to a meeting on June 21, 2006, with Pitts, where Purvis unsuccessfully tried to buy heroin. Prior to the meeting, his source had told him that the sellers was named Jake or Jacob. The trial court granted Pitts's motion to suppress statements, and Pitts thereafter filed a motion *in limine*, seeking to exclude any mention of Purvis's conversation with the confidential source. The motion requested "the State and its witnesses not to disclose the contents of any conversation with the alleged confidential source or the existence of said source." Pitts argued that the information constituted inadmissible hearsay and that he would be denied an opportunity to cross-examine the confidential source. The State indicated that it did not intend to elicit testimony of any conversation between Purvis and the informant but that it would be appropriate for the officer to testify where he obtained the information and why he contacted Pitts, asserting that the testimony would establish how the investigation began. The trial court, in reliance on *People v. Rodriguez*, 312 Ill. App. 3d 920 (2000), granted Pitts's motion *in limine*.

¶ 5 A jury trial took place. Purvis testified that he met with a man he identified as Pitts at a gas station on June 21, 2006. Pitts arrived in a blue pickup truck. Purvis attempted to buy heroin. Pitts stated that he did not have any to sell, but could get some. Purvis refused to front the money for the drugs and left. He anticipated receiving a call from Pitts about purchasing heroin but Pitts did not call. On June 26, 2006, Purvis called 815-953-6747, a phone number Pitts had given him. He recognized Pitts's voice and asked if he had any heroin. Pitts stated that he did and the two arranged to meet at the same gas station. A surveillance team was put in place. As they agreed, Purvis called Pitts when he was nearing the gas station. Purvis said that Pitts arrived in the same blue pickup truck,

and that its license plate was noted by one of the surveillance officers. Pitts objected to testimony about the license plate, which the trial court overruled, based on the understanding that “one of” the surveillance agents was going to testify. Following argument on the objection, the State withdrew the question regarding the license plate. Purvis continued his testimony that he paid \$120 to Pitts and received a plastic bag in return. The bag contained what was later tested and determined to be 0.3 grams of heroin. Pitts asked him if he needed any paraphernalia to shoot the heroin. The two men spoke briefly until Pitts said he had to get home to his father, who was awaiting the heroin.

¶ 6 The State directed Purvis back to after the June 21 meeting took place and asked how he came “to find out that that person’s name was Jacob Pitts?” Purvis said that “Jake’s name was supplied to [him], the first name of Jake.” Purvis explained that he had run the license plate of the pickup truck after the first meeting with Pitts and obtained the last name of Pitts. Because he had been “provided the first name of Jake or Jacob prior to the meeting,” he did a computer search for the name “Jacob Pitts.” He received two results; one Jacob Pitts had a date of birth in 1982, which Purvis said would have matched the age of the individual with whom he had met on June 21. He pulled up Pitts’s driver’s license photograph and identified Pitts as the man he had seen at the gas station.

¶ 7 The defense cross-examined Purvis, asking the name of the person who had supplied Pitts’s name to him. The State objected, and a sidebar took place, at which Pitts moved for a mistrial. He argued that Purvis’s disclosure of the contents of his discussion with the confidential informant violated the motion *in limine*. The State argued that it did not ask Purvis, “where did he get [the information?], and that it did not refer to an unknown source or confidential informant. The trial court denied Pitts’s motion for a mistrial. Questioning resumed and Purvis stated that one of the surveillance officers wrote down the license plate number of the truck Pitts was driving and gave it

to him. He did not research the phone number Pitts gave him but he could tell when he called that it was a mobile phone and that Pitts was driving while speaking to him. Pitts was arrested in March 2007.

¶ 8 Sean Koren, a Bolingbrook police officer, testified that he participated in the June 26 surveillance of the gas station. He became concerned for officer safety when he could not see Purvis and drove past the gas pumps. He saw Pitts for three to four seconds. He did not obtain Pitts's license plate number and did not know who did. Koren identified Pitts in open court. The State offered the stipulation of Fred Pitts, where the parties agreed that Pitts would testify that he was Jacob Pitts's uncle, served as the corporate secretary of P & D Antenna Corporation, and that phone number 815-953-6747 was registered to a P & D mobile phone affixed to a P & D pickup truck.

¶ 9 Fred Pitts testified for the defense. P & D had been a family business for over 50 years. Through another entity, GAF Services, P & D owned 20 to 30 blue pickup trucks. They were owned by, and licensed to, GAF. None of the trucks was owned by or registered to anyone named Pitts. Each of the trucks was assigned a mobile phone that was physically part of the pickup. The phone number that Purvis called to arrange the drug transaction was installed in a truck that was assigned to Pitts's father in 2006. He had died in 2007 from drug abuse. Jacob was not living with his father in 2006 due to the father's drug use. Pitts and his father looked alike. A picture of each was admitted into evidence. The registrations and ownership certificates of the GAF pickups were also admitted into evidence.

¶ 10 Pitts testified. In 2006, he was working long hours at a chicken farm. He denied selling heroin to Purvis or having met Purvis prior to his prosecution. The phone number Purvis called belonged to his father's phone that was affixed to the P & D truck his father drove. Pitts did not have

access to the truck. He drove a 1990 Chevy Astro Safari van in 2006.

¶ 11 The jury convicted Pitts. He filed a motion for a new trial, arguing that the trial court should have granted his motion for a mistrial, based on the State's violation of the motion *in limine* , which the trial court denied. The trial court sentenced Pitts to a three-year term of probation. He appealed.

¶ 12 **ANALYSIS**

¶ 13 On appeal, Pitts argues that he was denied a fair trial where the State's witnesses referred to statements made by undisclosed sources that provided Pitts's name and the license plate of the vehicle involved in the drug transaction.

¶ 14 Hearsay is an out-of-court statement offered to prove the truth of the matter asserted therein. *People v. Sims*, 285 Ill. App. 3d 598, 608 (1996). When necessary to explain the State's case, an officer may describe the steps in his investigation and may testify to conversations with others when the testimony is not offered to prove the truth of the matter asserted but to show the officer's investigative steps. *People v. Simms*, 143 Ill. 2d 154, 174 (1991). "Testimony describing the progress of the investigation is admissible even if it suggests that a nontestifying witness implicated the defendant." *Simms*, 143 Ill. 2d at 174. An officer may testify that he conversed with an individual and thereafter acted on the information he received. *Sims*, 285 Ill. App. 3d at 608. However, the officer cannot testify to the substance of the conversations with the individual as it constitutes inadmissible hearsay. *Sims*, 285 Ill. App. 3d at 608. This court will not reverse a trial court's evidentiary rulings absent an abuse of discretion. *People v. Caffey*, 205 Ill. 2d 52, 89 (2001).

¶ 15 The trial court granted Pitts's motion *in limine* to preclude the State from eliciting testimony regarding any statements made by the Purvis's confidential informant. While testifying on direct examination, Purvis stated that the name of Jake "was supplied to him." Purvis continued testifying

regarding the investigative steps he took in tying the first name with other identifying information. Purvis explained that he conducted this stage of his investigation after an unsuccessful meeting with Pitts in which he attempted to purchase heroin. The record from the motion to suppress hearing establishes that the confidential informant accompanied Purvis to the June 21 meeting with Pitts. The State, in accordance with the motion *in limine*, did not question Purvis about the informant or make any reference to an informant's role in the meeting. We find this situation distinguished from that in *Rodriguez*, on which Pitts relies. In *Rodriguez*, the arresting detective testified that he received information "about a possible suspect from an undisclosed source." *Rodriguez*, 312 Ill. App. 3d at 929. Here, at this point in the investigative process, Purvis had firsthand knowledge of Pitts's first name from the June 21 meeting at the gas station. Purvis then explained how he used that information, along with his eyewitness identification of Pitts, to put his first name to his last. We thus conclude that Purvis's statement constituted a step in the investigative process and was admissible as a hearsay exception.

¶ 16 Pitts also argues that evidence regarding the license plate number of the vehicle Pitts drove to both meetings at the gas station was improperly admitted. He maintains that admission of the evidence prejudiced him by allowing the State to connect the truck to Pitts. According to Pitts, because the vehicle was owned by and registered to his family's business, it could not have traced back to him.

¶ 17 The record establishes that the source of the license plate number was never revealed at trial. Rather, testimony established only that some unnamed member of the surveillance team noted the license plate number. Purvis stated it was given to him in surveillance notes, which were not maintained. However, the exact license plate number is never revealed during any testimony. Like

the information that supplied Purvis with Jake's first name, the license plate number was not admitted for the truth of the number, but to explain how Purvis was able to determine Pitts's full name following the June 21 meeting. Without mention of the results of the license plate search, the jury would not understand how Purvis jumped from knowing a first name of Jake, to identifying Pitts. *People v. Jura*, 352 Ill. App. 3d 1080, 1085 (2004) (when testimony is necessary to fully explain State's case to factfinder, statements are not inadmissible hearsay when offered for the limited purpose of showing the course of a police investigation). The statements about the license plate did not constitute inadmissible hearsay. We find that its admission was not in error.

¶ 18 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 19 Affirmed.