

No. 1-10-3069

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

---

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. 10 CR 3397
	)	
ROOSEVELT THOMPSON,	)	Honorable
	)	Domenica A. Stephenson,
Defendant-Appellant.	)	Judge Presiding.

---

JUSTICE GARCIA delivered the judgment of the court.  
Justices Lampkin and Palmer concurred in the judgment.

**ORDER**

¶ 1 *Held:* Judgment entered on defendant's conviction of possession of a controlled substance affirmed over his claim that the trial court erred in sustaining the State's objection to a line of questioning on cross-examination; \$200 DNA fee vacated.

¶ 2 Following a jury trial, defendant Roosevelt Thompson was found guilty of possession of a controlled substance (less than 15 grams of heroin), then sentenced to two years' imprisonment. He was also assessed fines and fees totaling \$1,330. On appeal, defendant contends that the trial court committed prejudicial error by preventing his defense counsel from

cross-examining a police officer in furtherance of his theory of defense, and that he was improperly assessed a \$200 DNA fee.

¶ 3 The evidence adduced at defendant's trial shows, in relevant part, that about 11:50 p.m. on January 23, 2010, three Chicago police officers were conducting a traffic stop of a Lincoln Mark VIII in the 3700 block of West Ohio Street, in Chicago, when they observed defendant throw two golf-ball sized items from the front passenger seat into the back seat of the car. The objects were recovered and determined to be two knotted plastic bags that each held 13 mini-ziploc baggies bearing the "Superman" logo and containing heroin. Defendant subsequently told police that "he was stupid for having the two jabs," *i.e.*, street slang for individual baggies of heroin. He also offered to "give up an AK-47 to help him out, to let him go."

¶ 4 During the cross-examination of Officer Belcik, who assisted with the traffic stop and observed defendant toss the heroin, defense counsel sought to elicit information regarding a weapon that was allegedly recovered from the driver of the car, Patrick Milton. Counsel pursued the following line of questioning:

"Q. At some point on the scene you had an opportunity to interview Mr. Milton?

A. Yes.

Q. And as a result of interviewing Mr. Milton, your partner was able to recover a loaded Smith and Wesson?

MS. JAKUBIAK [assistant State's Attorney]: Objection.

THE COURT: Sustained.

Q. Did Mr. Milton give any information – during your interview of Mr. Milton, can you tell the Ladies and Gentlemen what did you learn?

MS. JAKUBIAK: Objection.

THE COURT: Sustained.

Q. How long was your conversation – your interview – of Mr. Milton?

How long did your interview of Mr. Milton last?

MS. JAKUBIAK: Objection.

THE COURT: Overruled.

A. I can't recall. It varied as to whether it was on scene or at the 11th District.

Q. After Mr. Milton was interviewed, your partner, Officer Ducar, went to 1615 North Ridgeland?

MS. JAKUBIAK: Objection.

THE COURT: Sustained.

Q. After interviewing Mr. Milton, do you recall whether any information was given to you regarding a loaded Smith and Wesson?

MS. JAKUBIAK: Objection.

THE COURT: Sustained."

¶ 5 At this point, counsel requested a sidebar to confirm the grounds on which the State's objections had been sustained. The court responded that it was "a matter of relevance." Counsel argued that his questioning was "very relevant to our defense," and explained:

"Our theory is that the officers never actually saw my client throwing the narcotics. Mr. Milton – there were three individuals in the vehicle. Mr. Milton was able to give the officers a weapon, which they asked for. My client was not – and subsequently he is being charged, and Mr. Milton was not."

¶ 6 The State disputed the relevance of the questioning, arguing that "the production of a gun by an uncharged person who was on the scene irrelevant [*sic*] based on the fact that, first of all, it is a gun, it is not drugs, which is what the Defendant is charged with." The State further argued that counsel's questions and theory "call for heavy reliance on hearsay statements."

¶ 7 In ruling on the State's objection, the court first noted that counsel had attempted to "elicit the statement from the driver of the vehicle," and that it had sustained the State's objection based on hearsay. The court then confirmed with counsel the defense theory, *i.e.*, that "since Mr. Milton gave them information about a gun, he is not charged, but basically since your client didn't give information about a gun, he was charged." After counsel conceded that this was the theory, the court responded: "Well, that calls for speculation, and it is not relevant, and then you are asking the jury to consider something that they shouldn't consider and basically whether or not Mr. Milton is charged or not, he is not a named co-defendant." The court then sustained the State's objection. Thereafter, the jury found defendant guilty of possession of a controlled substance, and the court sentenced defendant to two years' imprisonment.

¶ 8 In this appeal from that judgment, defendant first contends that the court committed prejudicial error by preventing counsel from cross-examining Officer Belcik regarding a gun recovered from Milton, the driver of the car. He claims that Officer Belcik's responses were relevant to his theory of defense that he did not receive the same treatment as Milton, who was not charged with drug possession because a gun was recovered from him.

¶ 9 The State responds that the court properly sustained its objections to counsel's cross-examination because the questions called for hearsay statements. The State also responds that counsel's questions were not relevant to the charges faced by defendant.

¶ 10 An evidentiary ruling, such as the one at issue here, is within the sound discretion of the trial court and will not be reversed absent an abuse of that discretion. *People v.*

*Maldonado*, 402 Ill. App. 3d 411, 416 (2010), citing *People v. Caffey*, 205 Ill. 2d 52, 89 (2001).

A reviewing court will only find an abuse of discretion if the court's ruling is arbitrary, fanciful, unreasonable, or no reasonable person would take its view. *Maldonado*, 402 Ill. App. 3d at 416, citing *Caffey*, 205 Ill. 2d at 89.

¶ 11 At the outset, we note that during the sidebar requested by defense counsel to ascertain the grounds on which the State's objections had been sustained, counsel presented a cursory theory of the defense being pursued in response to the State's argument on relevance. Insofar as this was an attempt at making an offer of proof, it provided few details as to what the officer would have actually testified. That said, however, it is evident that certain of the disputed questions posed by counsel to Officer Belcik on cross-examination clearly called for a hearsay response.

¶ 12 The record shows that during the cross-examination of Officer Belcik, counsel referred to the officer's interview with Milton and inquired, "what did you learn" and "do you recall whether any information was given to you." The sole purpose of these questions, as evident from the sidebar conference, was to elicit from Officer Belcik that Milton "was able to give the officers a weapon." Such a response clearly meets the definition of hearsay, *i.e.*, an out of court statement offered to prove the truth of the matter asserted, and generally inadmissible at trial. *People v. Wilson*, 2012 IL App (1st) 101038, ¶ 38. As such, it does not fall under the course of conduct exception to the hearsay rule, as defendant claims, since the questions clearly called for the substance of the conversation to prove the matter asserted. *People v. Jones*, 153 Ill. 2d 155, 159-60 (1992). We therefore conclude that the trial court did not abuse its discretion in sustaining the State's objections to the predicate questions which called for a hearsay response. *Maldonado*, 402 Ill. App. 3d at 416.

¶ 13 Notwithstanding the hearsay issue, we find that the line of questioning posed by counsel also lacked relevance. Evidence is relevant only if it has a tendency to make the existence of any fact of consequence to the determination more or less probable than it would be without such evidence. *People v. Illgen*, 145 Ill. 2d 353, 365-66 (1991).

¶ 14 In this case, counsel explained that the questions he posed to Officer Belcik on cross-examination were intended to elicit evidence that Milton gave police information about a gun for the purpose of establishing "that the officers never actually saw [defendant] throwing the narcotics," and Milton was never charged. However, the mere fact that Milton allegedly gave police information about a gun allows no logical inference that the officers did not see defendant throw the narcotics. Similarly, the fact that Milton was allegedly not charged with drug possession because he led police to a gun has no bearing on the issue of defendant's guilt of the charged narcotics offense. As such, the questions posed by counsel were not substantively designed to make any fact of consequence to the determination more or less probable, and we, therefore, have no basis for finding that the trial court abused its discretion in sustaining the State's objection to them. *Maldonado*, 402 Ill. App. 3d at 416.

¶ 15 Defendant next contends that he was improperly assessed a \$200 DNA analysis fee because his DNA profile is already registered in the Illinois State Police database in connection with a prior conviction. The State concedes that this fee was improperly assessed and should be vacated. Pursuant to the supreme court's ruling in *People v. Marshall*, 242 Ill. 2d 285, 303 (2011), we agree that the trial court was not authorized to assess defendant the \$200 DNA fee where he is currently registered in the DNA database. We therefore vacate that fee.

¶ 16 For the reasons stated, we vacate defendant's \$200 DNA fee and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 17 Affirmed in part; vacated in part.

No. 1-10-3069