

2013 IL App (1st) 112705-U

SECOND DIVISION
September 24, 2013

No. 1-11-2705

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. 09 CR 9739
)	
CLYDE HAWK,)	Honorable
)	William G. Lacy,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Quinn and Justice Simon concurred in the judgment.

ORDER

¶ 1 *Held:* Judgment on defendant's jury conviction of burglary affirmed where trial court did not improperly restrict his ability to demonstrate witness bias or to present his theory of defense.

¶ 2 Following a jury trial, defendant Clyde Hawk was found guilty of burglary, then sentenced as a Class X offender to 17 years' imprisonment. On appeal, defendant does not contest the sufficiency of the evidence to sustain his conviction. He solely contends that he was denied a fair trial by the trial court's restriction of his testimony on the prior lawsuit he filed against one of the officers involved in processing him during the instant arrest, which prevented

him from demonstrating the bias of the State's witnesses, and from presenting his theory of defense to the jury. He thus requests that we reverse his conviction and remand his cause for a new trial.

¶ 3 The charges filed against defendant in this case stemmed from an incident that occurred on the morning of April 30, 2009, near the intersection of Lake and Peoria Streets in Chicago, Illinois. During this incident, a Chicago police officer observed defendant and codefendant Keith Covington, who is not a party to this appeal, break into a vehicle and handle property contained therein.

¶ 4 Prior to trial, the State filed a motion *in limine* seeking to preclude defendant from referring to the federal lawsuit he filed in 2003, which named Officer Iverliz Mathews-Vachy (Officer Mathews), who processed paperwork in the case at bar, as a defendant. The trial court ruled that defendant could testify that he previously filed a lawsuit against Officer Mathews, that the suit was no longer pending, and that the officer made certain statements to him after his current arrest, but that he could not refer to the suit's underlying claims, or to how it was resolved.

¶ 5 The parties revisited the issue on October 6, 2010, before the introduction of evidence at defendant's jury trial. Defense counsel argued that defendant should be able to testify that the prior suit involved allegations of police brutality, and that it had been settled. The trial court disagreed, stating that the settlement of the suit was irrelevant, particularly because no liability is assessed in settlement cases. The trial court then reiterated its previously announced parameters regarding defendant's testimony on the issue, and noted that defendant was allowed to present a defense, and to attempt to show any bias, prejudice, or motive to lie of a prosecution witness.

¶ 6 At trial, Angelo Mouloupoulos testified that on the morning of the incident, he parked his work van (work van), which contained a Shop-Vac, tool boxes, and tools, near the intersection of

Lake and Peoria Streets, and left it in a locked and secure condition. When he returned to his work van later that morning, he saw that his Shop-Vac and toolbox were outside of it and that someone had tampered with the passenger side door lock and window. He went to the police station and signed a complaint against defendant, who he did not know and to whom he did not give permission to enter his work van.

¶ 7 Chicago Police Officer Mark Grzywna testified that on the morning of the incident, he was on duty and began to follow a white van (van) that was being driven suspiciously on Lake Street. Upon reaching Peoria Street, Officer Grzywna saw the driver of the van park illegally near an unoccupied work van, so he parked across the street where he had an unobstructed view of both vans. He then saw the driver exit and approach the passenger side of the work van twice. The second time, he saw him make a stabbing motion in the air, then open the passenger side door, which now had a shattered window. Based on those facts, the officer reported a theft in progress.

¶ 8 Officer Grzywna further testified that he then saw another man, who he identified in court as defendant, exit the van and approach the work van. Officer Grzywna walked to the work van, and, from a distance of about three feet, saw defendant inside of it, handing a small toolbox and a Shop-Vac to Covington, who dropped those items onto the sidewalk when he saw the officer. He placed Covington under arrest, then ran after defendant, who had run westbound on Lake Street. Shortly thereafter, he found defendant hiding behind an air conditioning unit at the end of a nearby gangway, and took him into custody with the help of additional officers who arrived on the scene. Police subsequently learned that defendant was the registered owner of the van, and recovered a black-handled screwdriver from Covington.

¶ 9 Officer Melissa Ryan testified that she and Officers Mathews and Kappel responded to Officer Grzywna's call for assistance on the morning of the incident. Upon arriving at the scene,

she was directed to a nearby gangway, where she saw Officer Grzywna and defendant. She and Officer Kappel handcuffed defendant and escorted him to a police car, after which he was transported to the police station.

¶ 10 Defendant testified that he provided rides in his vehicle for a fee, and, on the morning of the incident, Covington paid him \$8 to drive him to Peoria Meats on Lake and Ada Streets. Before reaching that destination, he complied with Covington's request to pull over and wait for him in the van. After Covington exited the van, defendant waited inside of it for five or seven minutes, at which point officers arrived and placed him under arrest. Defendant denied exiting the van prior to that point in time, denied entering the work van and committing a burglary therein, and denied knowing what Covington planned to do.

¶ 11 Defendant further testified that in relation to a prior, unrelated arrest, he filed a lawsuit against Officer Mathews, and the lawsuit is no longer pending. When he was taken to the police station in the case at bar, he was placed in a room and Officer Mathews entered it, stated that he looked familiar, and requested identification. Officer Mathews then left the room, but returned approximately five minutes later, and told defendant "you're a lying piece of shit. I know I recognized you," and also told him that he was not leaving the police station.

¶ 12 In rebuttal, Officer Mathews testified that when she arrived on the scene the morning of the incident, she neither saw defendant nor took part in his arrest, but rather, left the scene after just a few moments and proceeded to the police station. Once there, her sole involvement in this case was to process the paperwork. She assisted Mouloupoulos in filling out the complaint. Mouloupoulos signed as the complainant, and she signed the complaint on behalf of the circuit court clerk. Officer Mathews further testified that she saw defendant in a room at the police station with several officers, but she did not enter that room or speak to defendant that day.

¶ 13 During closing arguments, defense counsel argued, *inter alia*, that defendant was being framed for this offense, stating:

"Well, the thing is, if Officer Grzywna is not telling you the truth, then what you are left with is well, they are framing him.

Well, okay. Why? Who is he?

The answer was provided by [defendant] when he testified. On a prior occasion pursuant to a prior arrest, he filed a lawsuit. Ms. Mathews was named. The matter is no longer in the court system. And on this April 30, 2009 morning, in that [police station], [defendant] says he comes into contact with Miss Mathews. Takes his ID and comes back and says you are not leaving here.

Ladies and gentlemen, she signed the complaint. And in so signing a complaint, the complaint's like an information. It's a charging document. It starts the process. She signed for Dorothy Brown, the clerk of the circuit court. The police officer signed for Dorothy Brown, affixed her name. Guess what? Her name's on the document that charges him. I guess he wasn't leaving there."

¶ 14 The jury found defendant guilty of burglary, and, in this appeal from that judgment, defendant contends that the trial court committed reversible error by improperly restricting his testimony regarding the lawsuit he filed against Officer Mathews, thereby preventing him from demonstrating bias on the part of the State's witnesses, and from adequately presenting his theory of defense to the jury. We review a trial court's ruling on a motion *in limine* for an abuse of

discretion (*People v. Kirchner*, 194 Ill. 2d 502, 539 (2000)), which occurs only where the court's decision is arbitrary and no reasonable person would adopt the same view (*People v. Morgan*, 197 Ill. 2d 404, 455 (2001)).

¶ 15 A defendant has the right to present a defense, but the trial court has broad discretion in ruling on the admissibility of evidence sought to be excluded as irrelevant. *People v. Bohn*, 362 Ill. App. 3d 485, 490 (2005). The relevancy of proffered evidence is evaluated by determining whether it would have made the question of defendant's guilt of the charged offense more or less probable. *People v. Wheeler*, 226 Ill. 2d 92, 132 (2007). Although a defendant has a right to investigate during cross-examination whether a witness holds any bias, interest, or motive to testify falsely (*People v. Nelson*, 235 Ill. 2d 386, 420-21 (2009)), this right is not absolute, and the trial court retains broad discretion in determining the scope of that cross-examination at trial (*People v. Price*, 404 Ill. App. 3d 324, 330 (2010)).

¶ 16 Here, the evidence adduced at trial showed that Officer Mathews's involvement in the case at bar was limited to processing paperwork related to defendant's arrest. No evidence was presented that Officer Mathews was on the scene when Officer Grzywna observed defendant engage in the offense at issue, or that she was involved in taking him into custody, transporting him to the police station, or questioning him about the offense. Accordingly, Officer Mathews was not called as a witness in the State's case in chief.

¶ 17 Notwithstanding Officer Mathews' tangential involvement in this case, the trial court allowed defendant to testify that: (1) he had filed a lawsuit in connection with a prior arrest, (2) Officer Mathews was a named defendant in that suit, (3) the suit was no longer pending, and (4) Officer Mathews recognized him at the police station after this incident, cursed at him, and told him that he was not leaving the police station. In rebuttal, Officer Mathews refuted defendant's allegations regarding her conduct, and testified to her limited administrative involvement in this

case. During closing argument, however, defense counsel emphasized defendant's theory of defense that he had been framed by the police. He specifically stated that the reason defendant was targeted was the prior lawsuit he had filed against Officer Mathews, and argued Officer Mathews' signing of the complaint on behalf of the clerk of the court was of great significance. Based on the entirety of the record, we find no constitutional error arising from the limitations imposed by the trial court where the jury was made aware of any potential bias of Officer Mathews and of defendant's theory that he had been framed for the offense due to his prior lawsuit against her. *People v. Klepper*, 234 Ill. 2d 337, 355-57 (2009).

¶ 18 Defendant argues, nevertheless, that the trial court erred in ruling that he could not testify to the underlying claims of police brutality of the prior lawsuit, or to the fact that it was settled. According to defendant, those details were not only relevant, but their omission "took all of the persuasive force" out of his theory of defense. We disagree.

¶ 19 The allegations of police brutality in the prior lawsuit have no bearing on the charges against defendant here, which do not include allegations of police brutality. Further, defendant does not claim that the settlement in question contained any admission of liability on the part of Officer Mathews, and even assuming that it had, such admission would bear no relation to this case, which hinged on the testimony of Officer Grzywna, who was the arresting officer and who had no involvement in the prior lawsuit. Accordingly, we find that neither of the omitted aspects of the prior lawsuit would have made the question of defendant's guilt of burglary in this case more or less probable (*Wheeler*, 226 Ill. 2d at 132), and, as such, were properly excluded as irrelevant.

¶ 20 Further, to the extent defendant argues that he was prevented from demonstrating any bias on the part of officers Grzywna and Ryan, who did testify against him in the State's case in chief, the record shows otherwise. The trial court did not preclude him from questioning either officer

regarding any knowledge on their part of defendant's suit against Officer Mathews, and defense counsel did not explore that issue with either officer. We thus conclude that the trial court's ruling regarding the parameters of defendant's testimony about his lawsuit against Officer Mathews was not unreasonable or an abuse of discretion (*Morgan*, 197 Ill. 2d at 455), and reject defendant's claim to the contrary.

¶ 21 In reaching this determination, we have considered *People v. Averhart*, 311 Ill. App. 3d 492 (1999), relied upon by defendant, and find it distinguishable from the case at bar. In *Averhart*, defendant's theory of the case was that the arresting officer framed him due to bias stemming from a complaint defendant filed against him with the police department's Office of Professional Standards (OPS). *Averhart*, 311 Ill. App. 3d at 498. Defendant filed the OPS complaint against that officer after he sustained numerous injuries during a struggle that ensued when that officer arrested him on a prior occasion. *Averhart*, 311 Ill. App. 3d at 498. The trial court granted the State's motion *in limine* restricting defendant's cross examination of that incident and the OPS complaint, but allowed defendant to refer to the prior arrest as an "encounter," and that defendant had filed an OPS complaint which involved "serious charges." *Averhart*, 311 Ill. App. 3d at 494. On appeal, this court found that the trial court's restriction of defendant's cross-examination on this issue was an abuse of discretion, and reversed and remanded defendant's cause for a new trial. *Averhart*, 311 Ill. App. 3d at 494, 504. In doing so, this court relied on the fact that the officer in question was the "key prosecution witness," and that the investigation on the OPS complaint could have been reopened and have potentially led to his discharge. *Averhart*, 311 Ill. App. 3d at 498-99.

¶ 22 Here, in contrast, Officer Mathews was not a key witness against defendant. In fact, the evidence presented shows that Officer Mathews was not involved in defendant's arrest, and that her sole involvement in this case was in processing paperwork related thereto. Although

defendant makes much of the fact that Officer Mathews signed the complaint on behalf of the clerk of the court, it is clear that in doing so, she was not the person bringing the complaint against defendant; rather, it was Mouloupoulos who signed the complaint as the complainant. Further, whereas in *Averhart* the OPS complaint against the officer could be reopened, thereby placing his employment in peril, such was not the case here where the lawsuit was settled and defendant does not argue that the case could be reopened. Accordingly, the rationale applied in *Averhart* is inapplicable here.

¶ 23 We have also considered *People v. Chavez*, 338 Ill. App. 3d 835 (2003), cited by defendant, and find it equally distinguishable from the case at bar. In *Chavez*, the trial court did not allow defendant to question a testifying officer regarding a lawsuit defendant filed against other officers in relation to an incident that led to defendant's paralysis; which suit was still pending at the time of trial. *Chavez*, 338 Ill. App. 3d at 841-42. The trial court also precluded defendant from questioning the officer regarding statements he made to defendant after his arrest, which referenced the lawsuit and opined that the other officers should have killed him. *Chavez*, 338 Ill. App. 3d at 841-42. On appeal, this court found that such restriction of cross-examination was reversible error, and remanded defendant's cause for a new trial. *Chavez*, 338 Ill. App. 3d at 842-43. In doing so, we noted that defendant's theory of defense that he was being framed "was not much of a theory, but he had a right to present it for what it was worth." *Chavez*, 338 Ill. App. 3d at 841.

¶ 24 Here, defendant was allowed to testify that he had previously filed a lawsuit against Officer Mathews, but unlike *Chavez*, that lawsuit had been settled. Nevertheless, defendant was allowed to testify about the threatening statements he alleged Officer Mathews made to him at the police station, and, unlike *Chavez*, defendant was allowed to present his theory of defense. Accordingly, *Chavez* is distinguishable from the case at bar.

¶ 25 Further, even assuming that the trial court erred in restricting defendant's testimony regarding the underlying allegations of the prior lawsuit and its resolution, we find that such error was harmless due to the overwhelming evidence that supported defendant's conviction. *People v. Patterson*, 217 Ill. 2d 407, 428, 437 (2005). This evidence included Officer Grzywna's detailed testimony of his observation, from a distance of three feet, of defendant engaging in the burglary at issue; defendant's subsequent flight from the scene, and his apprehension behind a nearby air conditioning unit shortly thereafter; and Officer Ryan's corroborative testimony regarding the details of where and how defendant was taken into custody.

¶ 26 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 27 Affirmed.