

FILED

March 13, 2014
Carla Bender
4th District Appellate
Court, IL

2014 IL App (4th) 120951-U

NO. 4-12-0951

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Champaign County
JOSEPH L. HAIRSTON,)	No. 12CF674
Defendant-Appellant)	
)	Honorable
)	Heidi N. Ladd,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Appleton and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in allowing the State to play a squad-car recording wherein the police sergeant asked defendant why he had the exact currency denominations on his person the victim said were taken from her.

¶ 2 In August 2012, a jury convicted defendant, Joseph L. Hairston, of robbery (720 ILCS 5/18-1 (West 2012)). In October 2012, the trial court sentenced defendant to 25 years' imprisonment. Defendant appeals, asserting the trial court abused its discretion by permitting the State to play a squad-car recording because it constituted an impermissible use of a prior consistent statement played for the jury for the sole purpose of enhancing the victim's credibility. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In April 2012, the State charged defendant by information with robbery, a Class 2 felony (720 ILCS 5/18-1 (West 2012)), based on the allegation he took United States currency from the person of Elisha Reichert by the use of force.

¶ 5 Prior to defendant's August 2012 jury trial, defense counsel made an oral motion *in limine* to exclude portions of a squad-car recording in which the police officer "kept alluding to or saying ["]the victim says this, the victim says that,["] asserting the content unduly bolstered the credibility of the complaining witness. The State responded the officer's statements were not hearsay because they were not being offered for the truth of the matter asserted but, rather, to put defendant's answers in context. Further, the State noted by the time the squad-car recording would be played for the jury, Elisha would have already testified to the statements therein, thus eliminating any possibility of prejudice. The trial court denied the motion, finding the statements were not hearsay as they were only being offered to provide context for defendant's responses, but noted neither party would be able use the statements in the recording to bolster or impeach Elisha without first laying an appropriate foundation.

¶ 6 At trial, Elisha testified she left the Blind Pig Brewery in Champaign on foot shortly after 2 a.m., where she and two of her staff members had escorted a band that played earlier at the Urbana bar she managed. She split from her staff members and the band at Springfield and Goodwin Streets. She decided to stop at a gas station to get chips and cigarettes before proceeding home. As she was walking toward the gas station, she heard someone running or biking behind her, so she stepped off the sidewalk to allow the person to pass her. A man came up behind her, put his left arm around her neck, his right arm over her mouth, jerked her off her feet, and dragged her through a parking lot and around the corner of a small apartment building. The man told her he would kill her if she said anything. Elisha asked the man what he

wanted and he told her he wanted her money. She dumped her purse on the ground and the man took the \$11 she had. Elisha testified the denominations included a \$5 bill, a \$2 bill, and four \$1 bills; she knew the exact denominations because she had recently looked to make sure she had enough money to make her purchases at the gas station. She refused to tell the man where she lived and when he asked for her credit cards she told him they were old. The man told her to stay where she was and count to 100 and then he left.

¶ 7 Elisha waited approximately 20 to 30 seconds and then called the police on her cellular telephone as she walked to the gas station. Officer Elizabeth Ranck met her at the gas station. She described her attacker as a black male, medium build, approximately 5 feet 6 inches tall, wearing dark blue jeans, a red T-shirt, and a black do-rag. Shortly thereafter, a second officer arrived and asked her if she would be able to identify her attacker; she stated she could. The officer told her they had apprehended someone matching the description she gave and Officer Ranck drove her to another location a few blocks away. Once there, Elisha immediately recognized defendant as her attacker.

¶ 8 Officer Ranck testified she responded to the robbery call placed by Elisha, whom she met at the gas station. Elisha gave her a description of the man who attacked her. After other officers stopped a man fitting the description, Officer Ranck transported Elisha to another area for a "show-up," where Elisha looked at the suspect and told her, "that's him, I'm 98 percent positive. No, that is definitely him." Officer Ranck identified defendant as the man shown to Elisha.

¶ 9 Sergeant James Koker testified a few minutes after hearing the robbery report, he located defendant, who matched the description Elisha had given police (an African-American male with a red shirt, medium build, black do-rag and blue jeans), riding a bike two blocks east

and two blocks north of the crime scene. After Elisha arrived to the location of the "show-up," the police had defendant stand in the street, illuminated by a spotlight from a squad car. Officer Ranck radioed and informed him Elisha had identified the man as her attacker.

¶ 10 Sergeant Koker further testified when Elisha was asked if she could remember the denominations of the money stolen from her, she replied they were a \$5 bill, a \$2 bill, and four \$1 bills. After Elisha informed him of the denominations, Sergeant Koker spoke with another officer who told him he had searched defendant and recovered \$11 in the exact denominations Elisha said had been taken from her.

¶ 11 The squad-car recording was played for the jury. After defendant was read his *Miranda* warnings (*Miranda v. Arizona*, 384 U.S. 436 (1966)), Sergeant Koker asked him multiple times why he possessed a \$5 bill, a \$2 bill, and four \$1 bills, the exact denominations the victim said had been stolen from her. Defendant denied robbing anyone, insisted Elisha mistakenly identified him, responded the currency found on him was change from the purchase of his train ticket, and explained he had simply been riding a bicycle around town.

¶ 12 Defendant testified he had arrived in Champaign by train at approximately 10:30 p.m. on April 29, 2012. He purchased his train ticket from the conductor and received a \$2 bill as change. Once in Champaign, defendant found a bicycle at Habitat for Humanity. He planned to spend the night riding around town. Defendant denied robbing anyone.

¶ 13 At the close of evidence, the jury convicted defendant of robbery. Immediately thereafter, defendant filed a motion for acquittal, or in the alternative, a motion for a new trial, in which he argued in relevant part, the trial court erred in denying his motion *in limine* to preclude the State from playing the squad-car recording. In October 2012, the trial court denied

defendant's motion, and after determining defendant was required to receive a Class X sentence due to his criminal history, the court sentenced him to 25 years' imprisonment.

¶ 14 This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, defendant argues the trial court erred by permitting the State to play the squad-car recording. Specifically, defendant asserts because he did not incriminate himself during Sergeant Koker's questioning, Koker's repetitious statements concerning the denominations of the currency heard in the squad-car recording constituted an impermissible use of a prior consistent statement played for the jury for the sole purpose of enhancing Elisha's credibility. The State contends the statements made in the squad-car recording were not hearsay because they were not introduced to prove the truth of the matter asserted but, rather, to place the police interview in context.

¶ 17 A trial court's ruling on the admission of evidence will not be reversed absent an abuse of discretion. *People v. Williams*, 181 Ill. 2d 297, 313, 692 N.E.2d 1109, 1118 (1998).

" 'An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.' "

People v. Theis, 2011 IL App (2d) 091080, ¶ 30, 963 N.E.2d 378 (quoting *People v. Caffey*, 205 Ill. 2d 52, 89, 792 N.E.2d 1163, 1188 (2001)).

¶ 18 " 'All relevant evidence is admissible, except as otherwise provided by law. Evidence which is not relevant is not admissible.' " *People v. Dabbs*, 239 Ill. 2d 277, 289, 940 N.E.2d 1088, 1096 (2010) (quoting Ill. R. Evid. 402 (eff. Jan. 1, 2011)). Hearsay, which is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted," is not admissible unless

otherwise allowed by some other rule or statute. Ill. R. Evid. 801(c) (eff. Jan. 1, 2011). Prior consistent statements are hearsay and are generally not admissible for the purpose of corroborating the testimony of a witness because they may be used to unfairly enhance the credibility of the witness. *People v. Richter*, 2012 IL App (4th) 101025, ¶ 108, 977 N.E.2d 1257; *People v. Ruback*, 2013 IL App (3d) 110256, ¶ 26, 988 N.E.2d 745. However, testimony regarding an out-of-court statement used for a purpose other than to prove the truth of the matter asserted is not hearsay. See *People v. Banks*, 237 Ill. 2d 154, 181, 934 N.E.2d 435, 449-50 (2010) (out-of-court statements offered to explain the investigatory procedure the police followed (citing *People v. Jones*, 153 Ill. 2d 155, 160-61, 606 N.E.2d 1145, 1147 (1992)) or to show the police had probable cause to arrest a person based on the contents of a prior communication (citing *People v. Louisville*, 241 Ill. App. 3d 772, 781, 609 N.E.2d 682, 688 (1992)) are not hearsay and are admissible).

¶ 19 In this case, defendant's argument rests on his belief, because he did not incriminate himself during the interview, the sole reason for introducing the squad-car recording and Sergeant Koker's statements therein was to enhance Elisha's credibility. We disagree.

¶ 20 The squad-car recording was introduced during Sergeant Koker's testimony. It was a record of defendant's interrogation. Koker gave defendant multiple chances to explain why he was found, within blocks of where the robbery occurred, with the exact amount of money in the exact denominations Elisha reported taken from her. Koker's statements were admitted to provide a context for the answers defendant gave. Koker was merely confronting defendant with the evidence he had, a very common practice in police interrogations. Further, a police officer's statements to a defendant during questioning are admissible to show their effect on a defendant. *Theis*, 2011 IL App (2d) 091080, ¶ 33, 963 N.E.2d 378.

¶ 21 Koker informed defendant the victim told him a \$5 bill, a \$2 bill, and four \$1 bills had been taken from her and questioned why defendant had those exact denominations on his person. The officer was giving defendant a chance to explain why he had the exact property the victim said was taken from her just minutes before, on his person, including the fairly unique \$2 bill. Absent Sergeant Koker's questions, defendant's responses, *i.e.*, the money on his person was change from the purchase of his train ticket, would not have made sense. See *Theis*, 2011 IL App (2d) 091080, ¶ 33, 963 N.E.2d 378 (no error in admitting unredacted videotape of interview with defendant that included the detective's assertions he knew something happened between defendant and the two-year-old victim because absent those statements, defendant's responses would have made no sense).

¶ 22 The squad-car recording contained relevant evidence not introduced to prove the truth of the matter asserted but, rather, to provide context for defendant's statements during the course of the police investigation. The trial court did not abuse its discretion in permitting the State to play the squad-car recording for the jury.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 25 Affirmed.