2019 IL App (1st) 181251-U

FOURTH DIVISION
May 9, 2019

No. 1-18-1251

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

JOHN LYMBERIS,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellant,	)	of Cook County
	)	
v.	)	2016-L-002275
	)	
GRACE WU,	)	Honorable
	)	Marguerite Anne Quinn,
Defendant-Appellee.	)	Judge Presiding

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Gordon and Burke concurred in the judgment.

O R D E R

Held: Where plaintiff sprained wrist in pursuit of defendant's escaped dog, trial court did not err in (1) rejecting argument that status as law enforcement officer entitled plaintiff to modify elements of statutory tort claim against dog's owner, (2) refusing to modify pattern jury instruction, or (3) baring irrelevant witness testimony.

¶ 1 Harwood Heights Police Sergeant John Lymberis sprained his left wrist on February 15, 2015, when he slipped and fell on ice near Grace Wu's home while trying to catch her escaped dog. Sgt. Lymberis brought a personal injury claim against Wu alleging common law negligence and liability under the Animal Control Act. 510 ILCS 5/16 (West 2014) (Act). A trial ensued and

the jury rejected both claims. Sgt. Lymberis appeals only from the statutory claim. Sgt. Lymberis contends that because he was acting as a law enforcement officer, the phrase "without provocation" should have been read out of the statute and the jury instructions. He also contends it was an abuse of discretion for the trial court to bar the proposed testimony of another law enforcement officer as irrelevant, and a civilian employee police dispatcher as untimely disclosed before the trial. Wu responds that the legislature did not create an exemption from the statute for members of law enforcement and that the trial court properly exercised its discretion in barring the two witnesses.

¶ 2 A two-day trial was conducted in February 2018, about three years after Wu's dog, Willie, somehow escaped from her home while she was out attending a funeral. Willie is a Doberman-Labrador-Husky mix, who weighed 71 pounds, and was 11 years old in 2015. Wu, who was in her mid-70's in 2015, testified that she had kept Dobermans since she was a teenager. She adopted Willie as a puppy in 2006 and he had never hurt anyone. As she returned home in her vehicle, she observed Willie, but he would not answer her calls. An anonymous passerby telephoned the Harwood Heights police for assistance. Civilian police dispatcher Christine Vangeerty answered the call. Officer Marc Felsenthal was the first to respond to Vangeerty's dispatch. When Officer Felsenthal attempted to grab the dog by the collar, he was bitten on the hand. Sgt. Lymberis and Officer Robert McNally next arrived with animal handler's nooses (long poles with loops at one end). Officer Felsenthal needed medical attention and was not present when Sgt. Lymberis was subsequently injured.

¶ 3 Sgt. Lymberis testified that he had noosed "possibly" one dog before attempting to catch Willie. The two officers cornered the dog inside Wu's hedges. There was snow and ice on the ground. Officer McNally told Sgt. Lymberis to be careful because he was on ice. Sgt. Lymberis

testified he crouched down and was "trying to jab it [the dog] in its face and trying to get its snout into the noose," while Willie was barking, showing his teeth, and growling. On cross-examination, Sgt. Lymberis said Willie looked "upset" and "scared" and was trying to get away. Officer McNally corroborated that Willie was not trying to attack and was instead trying to get away. Sgt. Lymberis further testified that when he crouched down and extended the pole, he lost his balance and fell. He testified that he lost his balance because the dog was "pushing up against the noose," although Sgt. Lymberis had omitted this detail from his written accident report and also did not tell any of his medical care providers that a dog pushed him over. The accident report that Sgt. Lymberis completed asked him to "Describe what happened to cause your injury." He wrote on the form, "While attempting to catch an aggressive, loose dog with a noose in an ice-covered alley, I slipped on ice in the alley and fell face first. I attempted to brace myself with my hands as I landed on a concrete ice-covered alley. As I fell, I was still holding the noose in my right hand, and noose took most of the impact from my right hand. But I landed on the base of my palm and inner left wrist of my left hand." Emergency room nurse Stacy A. O'Brien testified that she noted in Sgt. Lymberis's medical records that he presented to the emergency department "with left wrist pain after falling while trying to catch a loose dog in an alley." Dr. Gregory Fahrenbach, M.D., a board-certified orthopedic surgeon, testified that a week after the accident, Sgt. Lymberis said he had slipped on ice and fallen down while out with a fellow patrol officer. It is undisputed that the dog never bit Sgt. Lymberis.

¶ 4 Wu corroborated Sgt. Lymberis's testimony that the two officers cornered Willie at her hedges, but she testified that she was actually holding her dog's collar when Sgt. Lymberis stepped on ice and fell. When he said " 'Get your g** d** dog out of here,' " Wu complied and took Willie into her house. Sgt. Lymberis's recollection was slightly different, in that he testified

that about five minutes after he fell, the dog went back to its owner.

¶ 5 About 90 minutes later, Sgt. Lymberis drove himself to the hospital. There, his wrist was put in a cast and he was given "high-dose Motrin," which was the strongest painkiller he ever needed to take for the injury.

¶ 6 Sgt. Lymberis spent three months off work and in physical therapy before he was cleared for duty. Sgt. Lymberis testified that the left wrist sprain did not prevent him from keeping up with his household chores, but it did hinder his ability to care for and play with his two young children. By the time he finished physical therapy, Sgt. Lymberis was experiencing only "shards of pain" at a level of one or two on a scale of zero-to-ten and needed to take Advil only every couple of weeks. At the trial, Sgt. Lymberis testified that it was still painful to use his left wrist for weight-bearing activities and that he was "not as confident as [he had been] to get involved in a physical tussle." Sgt. Lymberis is right-handed.

¶ 7 He submitted medical bills totaling about $20,000 into evidence and testified about his annual salary.

¶ 8 After deliberating, the jury returned a verdict for Wu. The trial court denied Sgt. Lymberis's post-judgment motion. This appeal followed.

¶ 9 On appeal, Sgt. Lymberis contends that he should not have been required to prove the provocation element of a claim under the Act, because he was injured while performing his duties as a law enforcement officer in a reasonable manner. He also contends that the trial court should have accepted a proposed jury instruction indicating that if Sgt. Lymberis "was acting in self defense" then he could not have been provoking an injurious reaction from Wu's dog. Sgt. Lymberis presents these two arguments together, as provocation is a single element under the Act.

¶ 10 Sgt. Lymberis contends that the legislative purpose of the Act is thwarted in this particular case where provocation is determined as it always has been from the perspective of the animal and that in this instance it should be determined from the perspective of the injured law enforcement officer. He contends the legislature never intended to "place the purported 'rights' of a dog above those of human beings who are trying to protect other human beings." He also contends he acted in a reasonable manner by using the noose rather than his bare hands, because he knew that Willie had already bitten two people that day. Regardless, he contends that Wu admitted that he did not engage in any act of provocation. He contends his proposed jury instruction was an accurate and necessary statement of the law set out in *Steichman v. Hurst*, 2 Ill. App. 3d 415, 275 N.E.2d 679 (1971), and that the trial court's failure to give the instruction deprived him of a fair trial. He asks us to reverse and remand for purposes of a new trial.

¶ 11 Wu responds that Lymberis is asking the court to modify the statute in order to create strict liability, which a court cannot do, regardless of the plaintiff's status as a law enforcement officer. She contends it is well established that provocation is judged from the perspective of the animal. She also contends there is no support for Sgt. Lymberis's argument that we should read the provocation requirement out of the statute. She denies that she admitted there was a lack of provocation and states that this was a question which the jury determined, and that they determined it against Sgt. Lymberis. She further contends that the trial court did not abuse its discretion in rejecting a jury instruction that was based on that erroneous reading of *Steichman*, 2 Ill. App. 3d 415.

¶ 12 We review the statutory construction argument *de novo*. *Price v. Philip Morris, Inc.*, 219 Ill. 2d 182, 848 N.E.2d 1 (2005). We begin our analysis with an overview of the statute and the provocation element of a statutory claim. "At common law, a person injured by an animal could

not recover unless the injured party could prove that the animal had dangerous propensities, in that the animal had attacked someone before." *Beggs v. Griffith,* 393 Ill. App. 3d 1050, 1053-54, 913 N.E.2d 1230, 1235 (2009). See also 39 Am. Jur. Proof of Facts 3d 133 ("where the owner knew or should have known of the animal's natural or peculiar dangerous tendencies, and failed to exercise reasonable care to prevent the animal from harming another person," the injured person could recover under the common law). The "common law requirement that a plaintiff must plead and prove that a dog owner either knew or was negligent not to know that his dog had a propensity to injure people" was known as the " 'one bite rule ' " (*Harris v. Walker*, 119 Ill. 2d 542, 546-47, 519 N.E.2d 917, 918 (1988)) or "one free bite" (*Bright v. Maznik*, 162 Idaho 311, 315, 396 P.3d 1193, 1197 (2017) ("Under the one free bite approach, notice of the dog's viciousness is a condition precedent to liability; as a result, liability is not imposed for the first attack, bite, or wound because that is what gives rise to notice of the dog's viciousness.")). *See Borns ex rel. Gannon v. Voss*, 70 P.3d 262, 270 (Wyo. 2003) (discussing the one free bite approach).

¶ 13 The original version of the Animal Control Act was passed in 1949 with a purpose of "reduc[ing] the burden on dog-bite plaintiffs" by eliminating the one free bite approach. *Harris*, 119 Ill. 2d at 546-47. The legislature later amended the dog bite statute to include "other animals." *Harris*, 119 Ill. 2d at 547. Thus, the current Act provides:

> "If a dog or other animal, without provocation, attacks, attempts to attack, or injures any person who is peaceably conducting himself or herself in any place where he or she may lawfully be, the owner of such dog or other animal is liable in civil damages to such person for the full amount of the injury proximately caused thereby." 510 ILCS 5/16 (West 2014).

¶ 14 While a plaintiff under the Act need not prove that the defendant animal owner was negligent, the statute does not impose strict liability on the owner. *Beggs*, 393 Ill. App. 3d at 1054. Even when the "primary aim of the Act is to encourage tight control of animals for the protection of the public," courts still "require a factual and reasonable basis to impose liability." *Meyer v. Naperville Manner, Inc.,* 262 Ill. App. 3d 141, 148, 634 N.E.2d 411, 416 (1994)). Moreover, the statutory language places an "emphasis *** on [the injured plaintiff's] lack of provocation and [the] plaintiff's peaceable conduct in a place in which he is legally entitled to be." *Harris*, 119 Ill. 2d at 547. Accordingly, the plaintiff must prove four elements in order to recover under the Act: " '(1) an injury caused by an animal owned by the defendant; (2) lack of provocation; (3) the peaceable conduct of the injured person; and (4) the presence of the injured person in a place where he has a legal right to be.' " *Beggs*, 393 Ill. App. 3d at 1054 (*quoting Meyer*, 262 Ill. App. 3d at 147).

¶ 15 Pursuant to the Illinois Pattern Jury Instruction that corresponds to the Act, the jury was instructed:

> "The law provides that the owner of an animal is liable in damages for injuries sustained from any attack or injury by the animal on a person peacefully conducting himself in a place where he may lawfully be unless that person or another provoked the animal.
>
> The term 'provoked' means any action or activity, whether intentional or unintentional, which would reasonably be expected to cause a normal animal in similar circumstances to react in a manner similar to that shown by the evidence." *See* Ill. Pattern Jury Instructions, Civil, No. 110.04 (2009) (IPI).

¶ 16 Provocation is measured from the perspective of the animal. *Nelson v. Lewis*, 36 Ill. App.

3d 130, 131, 344 N.E.2d 268, 270 (1976). "Provocation instigates or initiates the acts resulting in harm." *VonBehren v. Bradley*, 266 Ill. App. 3d 446, 450, 640 N.E.2d 664, 667 (1994). "Provocation is defined as an act or process of provoking, stimulation or incitement." *Nelson*, 36 Ill. App. 3d at 131. Provocation may be unintentional or accidental. *Wade v. Rich*, 249 Ill. App. 3d 581, 589, 618 N.E.2d 1314, 1320 (1993); *Nelson*, 36 Ill. App. 3d at 131. The injured party need not be the provocateur, as the focus is on the animal's conduct and whether that conduct was the result of an outside stimulus. *Forsyth v. Dugger*, 169 Ill. App. 3d 362, 366, 523 N.E.2d 704, 707 (1988).

¶ 17 Thus, an injured dog lying on its owner's porch was provoked and there was no recovery where two young children had several times kicked or pushed the animal and one of them was bitten. *Siewerth v. Charleston*, 89 Ill. App. 2d 64, 231 N.E.2d 644 (1967). There was provocation where a child attempting to take something from a dog's mouth, struck the dog and pulled his tail and ears. *VonBehren*, 266 Ill. App. 3d 446.

¶ 18 However, there was no provocation in petting a chained dog on its back (*Severson v. Ring*, 244 Ill. App. 3d 453, 615 N.E.2d 1 (1993)), or when a visiting child began screaming after dogs barked at a knock on the front door (*Robinson v. Meadows*, 203 Ill. App. 3d 706, 561 N.E.2d 111 (1990)). There was also no provocation in the case Sgt. Lymberis relies on, *Steichman*, involving a ten-pound dog who was known for harassing the mail carrier, the garbage man, and the paper boy. *Steichman*, 2 Ill. App. 3d at 417. The mail carrier approached the house only after observing that the dog had gone around to the back. *Steichman*, 2 Ill. App. 3d at 418. Not seeing him, the mail carrier started across the lawn, but stopped when she heard his tags jingle as the dog returned to the front of the house, and when he was three feet away, she sprayed him with the anti-attack spray issued by her employer. *Steichman*, 2 Ill. App. 3d at 418. The dog

ran down the driveway, but returned, growling and barking, and she sprayed him for a second time. *Steichman*, 2 Ill. App. 3d at 418. After waiting to see that the dog was not returning, the mail carrier went up to the home's concrete stoop and deposited the mail. *Steichman*, 2 Ill. App. 3d at 418. When she turned around, the dog was waiting, growling and barking. *Steichman*, 2 Ill. App. 3d at 418. The dog followed her movements when she attempted to back up to ring the bell and walk off to each side. *Steichman*, 2 Ill. App. 3d at 418. When the dog charged her, she stepped aside and sprayed him, but fell to the ground, injuring her knee. *Steichman*, 2 Ill. App. 3d at 418. The court found that the mail carrier's "acts of spraying [the dog] were not unpeaceable or provocative but were reasonable measures for self-protection evoked by the dog's actions and deterring him only momentarily." *Steichman*, 2 Ill. App. 3d at 419.

¶ 19 Wu is not disputing that Sgt. Lymberis acted reasonably by using an animal handler's pole when dealing with an unfamiliar and frightened dog that had disregarded the calls of his owner and was trying to escape from the pursuing law enforcement personnel. Nevertheless, Sgt. Lymberis fails to cite any testimony, argument, or document which could be construed as Wu's admission of the provocation element. Sgt. Lymberis also fails to provide record support for his contention that he knew Willie bit two people before Sgt. Lymberis tried to capture him with the noose. The record confirms that Willie bit the hand of the first officer on the scene, Officer Felsenthal, when the officer reached out to grab Willie's collar. There is, however, no record support for the contention that Willie "nipped the female bystander" who noticed that Willie was on the street and called the police for assistance. In any event, Wu is not contending that Sgt. Lymberis should not have used the noose.

¶ 20 Sgt. Lymberis's proposal that we create a law enforcement exception to the provocation element or rule that provocation should be determined from the perspective of the injured officer

goes against the clear and plain language of the Act and precedent. Even if we accepted this argument as having some merit, courts have no authority to change the legislature's words. The primary rule of statutory construction is to give effect to the legislature's intent in enacting the statute. *Tosado v. Miller*, 293 Ill. App. 3d 544, 548, 688 N.E.2d 774, 777 (1997). Courts determine legislative intent from the language of the statute itself. *Tosado*, 293 Ill. App. 3d at 548. In construing the language, courts give the words of the statute their plain and ordinary meaning. *Tosado*, 293 Ill. App. 3d at 548. Courts may not disregard the plain language of a statute by reading into it exceptions, limitations, or conditions that are contrary to the express legislative intent. *Tosado*, 293 Ill. App. 3d at 548. "[C]ourts have consistently pointed out that it is not the view of the person provoking the dog that must be considered, but rather it is the reasonableness of the dog's response to the action in question that actually determines whether provocation exists." *Kirkham v. Will*, 311 Ill. App. 3d 787, 791, 724 N.E.2d 1062, 1065 (2000). Thus, it is clear that Sgt. Lymberis needed to prove all four elements of his statutory claim, including that he did not provoke an injurious reaction from Willie.

¶ 21 We also disagree with Sgt. Lymberis's reading of *Steichman*, 2 Ill. App. 3d 415, and his argument that the trial court's failure to modify the pattern jury instruction deprived him of a fair trial.

¶ 22 Generally, a trial court has discretion to determine the appropriate jury instructions, and its determination will be reversed only for an abuse of discretion. *Compton v. Ubilluz*, 353 Ill. App. 3d 863, 870, 819 N.E.2d 767, 775 (2004). The abuse of discretion standard is highly deferential to the trial court. *Taylor v. County of Cook*, 2011 IL App (1st) 093085, ¶ 23, 957 N.E.2d 413. An abuse of discretion occurs when no reasonable person would take the view adopted by the trial court. *Taylor*, 2011 IL App (1st) 093085, ¶ 23. Pursuant to Supreme Court

Rule 239(a), a trial court is to use the pattern instructions unless they do not accurately state the law. Ill. S. Ct. R. 239(a) (eff. Apr. 8, 2013); *Compton*, 353 Ill. App. 3d at 870.

¶ 23 In his brief, Sgt. Lymberis cites to the trial court conference regarding jury instructions and the discussion about modifying IPI 110.04. During this discussion, counsel withdrew a modified instruction and said he would tender a different modified instruction. Illinois law is clear that even if a party objects to a jury instruction, that party must still submit another instruction to the trial court. *Compton*, 353 Ill. App. 3d at 869. "Timely objection and remedial submission assist the trial court in correcting the problem and prohibit the challenging party from gaining an advantage by obtaining reversal based on the party's own failure to act." *Compton*, 353 Ill. App. 3d at 869. Sgt. Lymberis now fails to cite to a modified instruction, and Wu contends that Sgt. Lymberis has waived his objection by failing to tender a modified instruction. She argues this is particularly so when the version of IPI 110.04 which the trial court marked "given" is actually marked as the plaintiff's tendered instruction. We find that the argument has been waived. *Compton*, 353 Ill. App. 3d at 869.

¶ 24 Waiver aside, the argument is unpersuasive. Wu is not disputing that Sgt. Lymberis wanted to include a statement that if he were "acting in self-defense," he could not have provoked Willie. The report of proceedings indicates the trial court found that *Steichman* was distinguishable because the dog, not the mail carrier, was the pursuer. There is no similarity between the mail carrier's attempts to avoid and retreat as the ten-pound dog kept charging in *Steichman* and Sgt. Lymberis's pursuit and poking at the dog's face with an animal handler's pole. Wu's dog was not the aggressor and did not attack Sgt. Lymberis, but instead was attempting to flee Sgt. Lymberis when Sgt. Lymberis slipped on ice and fell down. Accordingly, we conclude that the trial court did not err in using the pattern instruction as it was written.

¶ 25 Sgt. Lymberis next contends it was an abuse of discretion to grant Wu's motion *in limine* to bar the testimony of Officer Felsenthal, who was the first to respond to the call for assistance and was bitten when he went to grab the dog's collar. The trial court granted Wu's motion *in limine* to bar Officer Felsenthal's testimony as prejudicial to Wu's defense and irrelevant to Sgt. Lymberis's claims of negligence and statutory liability. He contends the officer's testimony was necessary to determine whether Sgt. Lymberis was "acting in self-defense" when he slipped and fell and was also key evidence regarding the provocation element of his statutory claim.

¶ 26 Sgt. Lymberis has failed to cite and apply authority about the standard of review we should follow when considering the trial court's ruling. He cites only generally to a single case: *Chapman v. Hubbard Woods Motors Inc.*, 351 Ill. App. 3d 99, 812 N.E.2d 389 (2004), for the proposition that Officer Felsenthal's testimony would have bolstered Sgt. Lymberis's credibility and that without it, Wu misled the jury about Willie's nature and the seriousness of his bite on the hand of the officer who tried to grab the dog's collar. The cited case, *Chapman*, concerns a trial court's exclusion of an opinion witness's testimony, which did not occur in this case, thus the case is only generally relevant to our analysis. Sgt. Lymberis has also failed to cite authority at any point in his appeal regarding the element of provocation in a claim under the Act.

¶ 27 An appellant waives any argument that is not supported with relevant authority and adequate reasoning. *Rosier v. Cascade Mountain, Inc.*, 367 Ill. App. 3d 559, 568, 855 N.E.2d 243, 252 (2006); *Ferguson v. Bill Berger Associates, Inc.*, 302 Ill. App. 3d 61, 78, 704 N.E.2d 830, 842 (1998); Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013). We find that Sgt. Lymberis's failure to adequately cite and discuss relevant authority has resulted in waiver of our review.

¶ 28 Waiver aside, Sgt. Lymberis's contention fails. The trial court admits or excludes trial evidence in its sound discretion and we review its ruling for an abuse of discretion. *Carillo v.*

Ford Motor Co., 325 Ill. App. 3d 955, 966. 759 N.E.2d 99, 108 (2001).

¶ 29 Sgt. Lymberis's offer of proof indicates that Officer Felsenthal would have testified only about his dog bite, a bite that occurred by Sgt. Lymberis's own testimony about 15 or 20 minutes before Sgt. Lymberis slipped on the ice and fell. Sgt. Lymberis contends that Officer Felsenthal's testimony should have been admitted into evidence because it "was probably the most critical evidence as to the issue of provocation." "Evidence is relevant if it tends to prove a fact in controversy or render a matter in issue more or less probable." *In re A.W.*, 231 Ill. 2d 241, 256, 897 N.E.2d 733, 742 (2008). The fact that Officer Felsenthal had been bitten 15 or 20 minutes prior would have nothing to do with whether Willie was subsequently provoked when Sgt. Lymberis slipped on the ice while trying to capture Willie with an animal handler's tool. Also, it is undisputed that Felsenthal left the scene after being bitten and was not present when Sgt. Lymberis slipped on the ice. As he was not present at the time, Officer Felsenthal could not testify as to whether Willie was provoked to make contact with Sgt. Lymberis.

¶ 30 Sgt. Lymberis argues "without Felsenthal's testimony, the jury was left to speculate about the nature of Willie's attack on Felsenthal" and "may have determined that Felsenthal was not even bit[ten], as [Wu] testified that she did not see or hear her dog attack Felsenthal." Sgt. Lymberis argues that Officer Felsenthal's testimony was "necessary to assess the credibility of the parties and witnesses." He contends Officer Felsenthal "was screaming and shouting obscenities during the [15-to-20] seconds of the dog attack" and that if the jury had heard this evidence, "it almost certainly would have disbelieved Ms. Wu's testimony regarding the supposedly peaceful nature of this dog."

¶ 31 However, the record indicates that the jury heard ample evidence about Willie's bite to Officer Felsenthal's hand. The trial court ruled, "I'm going to let in the plaintiff's knowledge that

Officer [Felsenthal] had been bitten, not for the truth of the matter asserted, but to go to a state of mind as to how he was going to place this dog under control." Accordingly, Sgt. Lymberis was permitted to testify, "Officer Felsenthal got out of his squad to try to grab the dog at which time the dog bit him in the right hand." Officer McNally corroborated this account, testifying in part, "Sergeant Lymberis advised me after Officer Felsenthal was bit by the dog to go to the ·station and retrieve two nooses, one for him and one for myself." In response to questions about whether he saw Officer Felsenthal's injury, Sgt. Lymberis testified, "I saw a big bite mark on his right inner palm." Sgt. Lymberis also said that Officer Felsenthal's wound was bleeding and "I don't know if it was a nerve. Something was hanging out of a hole in his palm." In addition, Sgt. Lymberis testified that an ambulance was on the scene and he later testified that Officer Felsenthal had been transported to Resurrection Hospital. Accordingly, the jury was not "left to speculate about the nature of Willie's attack on Felsenthal" and would not have "determined that Felsenthal was not even bit." The jury was not misled in this regard. Moreover, testimony that Officer Felsenthal was "screaming and shouting obscenities" at the time was not relevant to the issue of Willie's subsequent provocation. The trial court did not abuse its discretion in barring this testimony.

¶ 32 Sgt. Lymberis's final contention is that the court abused its discretion by barring the 911 operator Vangeerty from testifying about her observation of Willie's demeanor on a prior occasion or occasions. Vangeerty did testify to provide an evidentiary foundation for audio tapes of the police radio transmissions. Sgt. Lymberis states that the trial court granted Wu's motion *in limine* to bar Vangeerty from testifying about her observations because Sgt. Lymberis failed to timely disclose that her trial testimony would include her observations. Wu responds that the trial court closed discovery on August 3, 2017, and that it was not until September 22, 2017 that Sgt.

Lymberis issued a first supplemental witness disclosure in order to include Vangeerty as a witness regarding the audio tapes and also state that she would testify that Sgt. Lymberis was a "competent, reliable" and well-regarded police officer. Further, on January 3, 2018, Sgt. Lymberis mailed a second supplemental witness disclosure which added that Vangeerty would testify about her personal observations of the dog prior to the date Sgt. Lymberis slipped and fell.

¶ 33 Sgt. Lymberis devotes two paragraphs describing the court's ruling and its impact on the outcome of the trial. In this brief argument, Sgt. Lymberis fails to cite the pages of the record that support his claim. He fails to cite the order closing discovery, he does not identify his original witness disclosure, he does not cite his first supplemental witness disclosure, and he fails to cite his second supplemental witness disclosure.

¶ 34 Sgt. Lymberis does cite the transcript to the pre-trial conference conducted on the afternoon of February 21, 2018, which was the day before the jury trial started. When the court asked, "at another time she's had an adverse encounter with this dog, right?," Sgt. Lymberis's attorney answered, "I don't really know. I mean, we almost have to *voir dire* her," and court replied, "that time has passed, so I'm going to grant this motion *in limine*." Thus, the transcript reveals that Sgt. Lymberis had yet to question Vangeerty about her proposed testimony and was uncertain about what she might say. In addition, Sgt. Lymberis's appellate brief reveals that his attorney's first communication with Vangeerty was when she called the law office on January 3, 2018, "presumably in response to the trial subpoena served on her." It appears then that counsel had not questioned Vangeerty during the discovery phase, did not know what her testimony might be, and yet was proposing that both attorneys prepare for that testimony before the trial was set to begin the following morning. Sgt. Lymberis contends that Vangeerty's testimony was "necessary rebuttal evidence" and that he was "unjustly prejudiced by its exclusion."

¶ 35 We find that this final argument is not adequately presented and has been waived. *Rosier*, 367 Ill. App. 3d at 568; *Ferguson*, 302 Ill. App. 3d at 78; Ill. S. Ct. R. 341(h)(7) (eff. Feb.6, 2013).

¶ 36 Based on our analysis of the record, arguments, and relevant case law, we affirm the trial court's rulings.

¶ 37 Affirmed.