

No. 1-12-2282

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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|--------------------------------------|---|------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the  |
|                                      | ) | Circuit Court of |
| Plaintiff-Appellee,                  | ) | Cook County.     |
|                                      | ) |                  |
| v.                                   | ) | No. 12 CR 4754   |
|                                      | ) |                  |
| DEONTE ROWDEN,                       | ) | The Honorable    |
|                                      | ) | Raymond Myles,   |
| Defendant-Appellant.                 | ) | Judge Presiding. |

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JUSTICE MASON delivered the judgment of the court.  
Presiding Justice Hyman and Justice Pucinski concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court did not violate defendant's right of confrontation where it limited cross-examination of a police officer regarding whether other people were present near the scene of defendant's arrest because such testimony was not relevant to whether the officers observed defendant possessing and attempting to conceal suspected narcotics.
- ¶ 2 Following a bench trial, defendant Deonte Rowden was found guilty of possession of a controlled substance and sentenced to two years' imprisonment. On appeal, Rowden contends

the trial court erred in restricting his trial counsel's cross-examination of a police officer regarding whether other people were present at the location of his arrest and where contraband was recovered. Finding no error, we affirm.

¶ 3 Chicago Police Officer Michael Cantore testified that on February 6, 2012, at about 7 p.m., he was on patrol with his partner, Officer Jolliff-Blake. They were on duty in an unmarked black Chevy Tahoe, at the intersection of Kilbourn and Madison, when Cantore noticed two men standing at the gas station in the mouth of the driveway leading into the gas station. They were yelling "blows, blows," a street-term for heroin. The officers stopped to place the men in custody. When the officers exited their vehicle, the men looked in the officers' direction and then turned around, facing north towards the rear of the gas station lot, and began yelling "lights out."

¶ 4 A third man, Rowden, was in the lot of the gas station approximately 50 feet from the officers. Cantore observed Rowden use his left hand to place a black object on the underside of the dumpster where he stood. Rowden then walked towards the officers, and Cantore walked to meet him. When Rowden reached the officers, he stated, "All I got is a bag of weed," and handed a bag of suspected cannabis to Cantore.

¶ 5 Jolliff-Blake detained the first two men and then walked up to Cantore and Rowden. After Rowden gave Cantore the bag of cannabis, Jolliff-Blake walked to the dumpster and retrieved the black object that Cantore saw Rowden place there. The object was a black magnetic key box that contained four tinfoil packets of suspected heroin. On cross-examination, Cantore testified that there is a black gate that surrounds the gas station and that the dumpster was along the gate.

¶ 6 Officer Jolliff-Blake gave a similar account of Rowden's arrest. He observed the two men yelling "blows, blows," and then when the police approached, the men turned in Rowden's direction and yelled "lights out." Afterward, Jolliff-Blake observed Rowden walk toward the dumpster with a black object in his hand, bend down, and place it on the underside of the dumpster. Jolliff-Blake also testified that there was only one person, Rowden, standing in the area where the two men yelled "lights out." Jolliff-Blake went to the dumpster and mimicked Rowden's actions in placing the item under the dumpster and recovered a black metal key box.

¶ 7 When asked on cross-examination whether he noticed anyone else in the lot besides Rowden and the two men, Jolliff-Blake testified that the two men yelling "blows, blows," were at the mouth of the gas station entry driveway, while Rowden was the only person actually in the lot. The following colloquy also occurred during defense counsel's cross-examination of Jolliff-Blake:

"Defense: \*\*\* Officer, did you note whether there were people in the store, coming in and out of the store during this process?"

State: Objection.

Court: I'll sustain the objection.

Defense: Officer, there is a vacant lot across the street? Do you recall if there is a vacant lot across the street [from the Citgo gas station where the arrest was made]?"

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State: Objection. Relevance.

Defense: Across the street from where the two men were soliciting business?

Court: I'll sustain the objection.

Defense: I think that might be all, your Honor."

¶ 8 The parties stipulated that if called to testify, Daniel Bryant would testify that he was a forensic chemist for the Illinois State Police Crime Lab. Bryant received the black magnetic box containing the suspected narcotics. He tested and weighed the narcotics evidence and determined that the contents of one packet weighed 0.2 gram and tested positive for the presence of heroin, while the contents of the remaining packets were not tested. Bryant estimated the weight of the heroin to be 0.7 gram. The parties also stipulated that a proper chain of custody was maintained at all times.

¶ 9 During closing argument, defense counsel argued that when the men yelled "lights out," the warning might have been directed at someone else. The court interjected, "There is no one else on the other side of the building. So they were either shouting to the garbage can or to the person near the garbage can." The court found Rowden guilty of possession of a controlled substance.

¶ 10 On appeal, Rowden contends the trial court erred by restricting defense counsel's cross-examination of Officer Jolliff-Blake regarding whether other people were at the scene when the two men yelled the warning "lights out." The State replies that constitutional concerns regarding the right of confrontation were satisfied where defense counsel was provided ample opportunity to cross-examine Joliff-Blake regarding the circumstances of Rowden's arrest. Further, the State argues that whether Rowden was associated with the two men who yelled the warning was of no

consequence where the evidence proved that he possessed the heroin the officers recovered from under the dumpster and testimony showed that no one else was near the dumpster.

¶ 11 At the outset, the State contends that Rowden forfeited review of this issue because counsel failed to make an offer of proof. See *People v. Boughton*, 268 Ill. App. 3d 170, 172 (1994); and *People v. Andrews*, 146 Ill. 2d 413, 420-21 (1992). However, while no offer of proof was made, defense counsel's questions regarding whether other people were in the gas station store and in the lot across the street clearly indicated their purpose – that Rowden was attempting to disassociate himself from the men advertising the sale of heroin. Therefore, an offer of proof was not required. See *People v. Lynch*, 104 Ill. 2d 194, 202 (1984).

¶ 12 The parties disagree on which standard of review this court should apply. Rowden contends that this court must review his claim under a *de novo* standard of review. See *People v. Averhart*, 311 Ill. App. 3d 492, 499 (1999) (reviewing *de novo* claim of improper restriction of cross-examination of police officer in narcotics prosecution). The State argues that the latitude a trial court affords a defendant on cross-examination is generally within the trial court's discretion, and is subject to review only where there is an abuse of discretion that results in manifest prejudice to defendant. See *People v. Jones*, 240 Ill. App. 3d 1055, 1060 (1992). The State further argues that *de novo* review is not applicable here because a defendant's rights under the Confrontation Clause are not absolute. See *People v. Jones*, 156 Ill. 2d 225, 243-44 (1993).

¶ 13 A defendant has a federal and state constitutional right to confront the witnesses against him. U.S. Const., amends. VI, XIV; Ill. Const. 1970, art. I, § 8. This right includes cross-examining witnesses to show any interest, bias, prejudice or motive to testify falsely. *People v. Klepper*, 234 Ill. 2d 337, 355 (2009); *People v. Averhart*, 311 Ill. App. 3d 492, 497 (1999). “A trial judge retains wide latitude to impose reasonable limits based on concerns about harassment,

prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or of little relevance." *Klepper*, 234 Ill. 2d at 355; citing *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986). "[T]he Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." (Emphasis in original.) *Delaware v. Fernsterer*, 474 U.S. 15, 20 (1985).

¶ 14 The trial court's discretion in restricting the scope of cross-examination comes into play only after the trial court has permitted, as a matter of right, sufficient cross-examination to satisfy the constitutional guarantee. *People v. Arroyo*, 328 Ill. App. 3d 277, 289 (2002). Here defense counsel cross-examined Jolliff-Blake extensively regarding who was present in the lot when the officers arrived and detained Rowden and the two men. Counsel also questioned the officer regarding the location and size of the dumpsters, Rowden's actions and statements, and the officer's retrieval of the black box Rowden placed under the dumpster. Therefore, we find that because defense counsel had ample opportunity to cross-examine Joliff-Blake, as well as Officer Cantore, regarding the circumstances surrounding Rowden's arrest, there was sufficient cross-examination to satisfy the right of confrontation and *de novo* review is therefore not warranted. Accordingly, we review the trial court's limitation of defense counsel's cross-examination of Jolliff-Blake for an abuse of discretion.

¶ 15 In reviewing whether the trial court improperly limited defense counsel's cross-examination of Jolliff-Blake regarding whether other people were across the street and in the store of the gas station, the question we must answer is whether "defendant's inability to make the inquiry created a substantial danger of prejudice by depriving him of the ability to test the truth of the witness's direct testimony." *Klepper*, 234 Ill. 2d at 356, quoting *People v. Harris*, 123 Ill. 2d 113, 145 (1988). This court will review the entire record and any alternative means

the defendant had to impeach the witness. If a review of the entire record shows that the trial court was made aware of “adequate factors concerning relevant areas of impeachment of a witness, no constitutional question arises merely because the defendant has been prohibited on cross-examination from pursuing other areas of inquiry.” *Id.*

¶ 16 The record reveals that although the officers’ attention was initially drawn to Rowden because the two men yelled the “lights out” warning in his direction, the officers each observed Rowden, immediately after the warning was issued, place a black object on the underside of the dumpster. Officer Cantore testified that Rowden stood alone in the direction that the men yelled. Jolliff-Blake testified that while the two men soliciting heroin stood at the driveway opening of the gas station, Rowden was the only person standing in the parking lot. Jolliff-Blake also testified that he immediately walked to the dumpster and mimicked defendant’s motion in placing the black object under the dumpster and recovered a black magnetic key box which contained suspected heroin.

¶ 17 Rowden argues that questioning Officer Jolliff-Blake about who was on the scene at the time of his arrest was relevant because it relates to whether he was associated with the two men advertising heroin. But whether anyone else was coming out of the store or was across the street in the vacant lot was not relevant where the undisputed testimony from the officers showed that they observed Rowden placing an object under the dumpster. See Ill. R. Evid. 401 (West 2012) (“ ‘Relevant evidence’ means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”); see also Ill. R. Evid. 402 (West 2012) (Providing that evidence which is not relevant is not admissible). Thus, even if we assume the two men were not warning

Rowden of the presence of police, that does not undermine the police officers' testimony regarding their observations of Rowden and the recovery of the black box.

¶ 18 Moreover, Rowden was not charged with conspiracy or possession with intent to deliver. Therefore, it was not relevant whether the "lights out" warning was intended to warn him or someone else. The State was not required to prove a connection between Rowden and the two men soliciting heroin sales. The warning merely drew the officers' attention to Rowden, who was then observed attempting to hide a black object. The warning was not relevant to prove Rowden possessed heroin; it was merely a part of the narrative describing the circumstances of his arrest. Based upon these circumstances, the trial court acted within its discretion in limiting cross-examination.

¶ 19 Finally, because we find the trial court did not err in restricting defense counsel's cross-examination of Officer Jolliff-Blake, we need not determine whether the error was harmless. Rowden, however, cites *In re Jovan A.*, 2013 IL App (1st) 103835, at ¶ 32, *People v. McWhite*, 399 Ill. App. 3d 637, 643 (2010), *People v. Naylor*, 229 Ill. 2d 584, 605 (2008), for the proposition that where a court comments on evidence, it is presumed to have considered the evidence and relied on it in convicting the defendant; therefore, the error concerning that evidence cannot be found harmless. But based on our finding that whether others were present in the vicinity at the time of Rowden's arrest was not relevant to the possession charge, the fact that the trial court commented that no one else was in the parking lot cannot serve to create error where none otherwise exists.

¶ 20 Accordingly, we affirm the judgment of the circuit court of Cook County finding Rowden guilty of possession of a controlled substance.

¶ 21 Affirmed.