

No. 1-11-0701

**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-Appellant,	)	Cook County.
	)	
v.	)	No. 08 C660878
	)	
MYLES ADAMS,	)	Honorable
	)	James L. Rhodes,
Defendant-Appellee.	)	Judge Presiding.

---

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

**ORDER**

¶ 1 *Held:* Order of trial court granting defendant's pretrial motion to suppress statement affirmed.

¶ 2 The State appeals from an order of the circuit court granting defendant Myles Adams' motion to suppress the statement he made to police following his arrest. The State seeks reversal of that order, contending that the evidence presented overwhelmingly established that defendant gave his statement to police knowingly and voluntarily.

¶ 3 The record shows that on May 7, 2008, bullets and a note stating "HF SKOOL SHOOTING FRIDAY 5/9" were found in the men's washroom of Homewood-Flossmoor High School. Defendant, a 17-year-old student at the school, was among those who were interviewed by Flossmoor police in connection with this incident. On May 9, 2008, Flossmoor police charged defendant with disorderly conduct after he gave them a written statement implicating himself in the offense.

¶ 4 Defendant filed a motion to suppress this statement, alleging that it was involuntary and obtained through threats, coercion, false promises, and in violation of his *Miranda* rights. At the hearing on the motion, Flossmoor police officer Dennis Carter<sup>1</sup> testified that on May 7, 2008, his partner, Detective Mark Swanson, asked him to sit in on interviews of students that he was conducting at the high school. At the time of the hearing, Detective Swanson was on medical leave and Officer Carter had not spoken to him for about a year.

¶ 5 Officer Carter testified that Detective Swanson conducted the interview of defendant and "would have" been doing most of the questioning after defendant was identified on a surveillance video of the entrance to the men's washroom. He later testified that he had not personally viewed the video and he did not know who told him who was on the video. He also did not know if defendant was given an opportunity to call his parents, but he "believe[d]" that defendant returned to class following the interview, and "believe[d]" that he was arrested around lunchtime.

¶ 6 Officer Carter further testified that about 15 minutes after being placed in an interview room at the Flossmoor police department, the officers "would have" gone in and explained the procedure and advised him of his *Miranda* rights. Defendant signed the *Miranda*

---

<sup>1</sup> Officer Carter is identified as "Officer Carter" in the report of proceedings; however, he identified his signature on the statement at issue, which clearly identifies him as "Detective Karner."

waiver and "possibly" denied writing the note or leaving bullets in the restroom. Carter did not recall whether defendant sought to have a break or use the restroom during the interview. After about 20 minutes of interrogation, defendant became "more truthful" and admitted leaving the items in the restroom because he had a "test or something" for which he had not prepared. Defendant ultimately agreed to providing a written statement to that effect, which Detective Swanson wrote and defendant signed. Officer Carter testified that after Swanson wrote the statement, he "would have" had defendant sign it.

¶ 7           The State then examined Officer Carter and after asking a series of questions, the trial court stated that "I would alert the State that if all I hear is yes or no and leading questions, \*\*\* I wouldn't be putting that much weight on it. Just alerting you. This is a witness who allegedly made the arrest. And, I'm not putting much weight on him. \*\*\*"

¶ 8           After Officer Carter testified that "[Detective Swanson] will have [defendant] read the statement along with Detective Swanson," defense counsel objected and the court sustained the objection as to what "would have" happened. Moments later, Officer Carter testified that Detective Swanson "would have had" defendant sign the statement after correcting it, and "would have" drawn a line through the back of the statement to prevent further writing.

¶ 9           After hearing argument, the court noted that

"First things [*sic*] that jumps out at me the witness spent a lot of time talking about what Detective Swanson did.

And, saying what would have happened than what normally happens. \*\*\* There is a crucial witness who did everything who has not been presented, who has not testified. And, it is important to the Motion and was not presented here."

The court then granted defendant's motion to suppress the statement.

¶ 10 In its motion for reconsideration, the State argued that the trial court erroneously applied the material witness rule. After hearing the parties' arguments at the hearing on the motion, the trial court denied it, explaining that "[i]t was not the mere absence of the witness. It was the absence of the witness who did everything in the case" and that it had looked at the totality of the circumstances in making its ruling.

¶ 11 In this appeal, the State contends that the trial court erred when it granted defendant's motion to suppress his statement where the evidence overwhelmingly established that the statement was given knowingly and voluntarily.

¶ 12 An appeal from a trial court's ruling on a motion to suppress presents mixed questions of fact and law. *People v. McDonough*, 239 Ill. 2d 260, 265-66 (2010). We accord great deference to the trial court's factual and credibility determinations, and will disturb them only if they are against the manifest weight of the evidence. *McDonough*, 239 Ill. 2d at 266; *People v. Sorenson*, 196 Ill. 2d 425, 431 (2001). This deference is grounded in the reality that the trial court is in a superior position to observe the witnesses' demeanor, weigh their credibility, and resolve conflicts in their testimony. *Sorenson*, 196 Ill. 2d at 431. Factual and credibility findings are against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *People v. Wells*, 403 Ill. App. 3d 849, 854 (2010). We review *de novo* the trial court's ultimate determination on the challenge to the granting of the motion to suppress. *Sorenson*, 196 Ill. 2d at 431.

¶ 13 Where defendant challenges the admissibility of a confession through a motion to suppress, the State bears the burden of proving that the confession was voluntary by a preponderance of the evidence. *People v. Slater*, 228 Ill. 2d 137, 149 (2008). Although, as here, the parties presented their evidence in reverse order, the State retains the *prima facie* burden of proving that the confession was voluntary, which may then be rebutted by defendant. *People v.*

*Reid*, 136 Ill. 2d 27, 51-54 (1990). We observe that the State failed to object to the reverse order in this case; however, as will be shown below, this procedure did not adversely affect the State's burden to make its *prima facie* case at the hearing. *Reid*, 136 Ill. 2d 27, 54 (1990); *People v. Wheeler*, 226 Ill. App. 3d 1092, 1100 (1992).

¶ 14 The evidence presented by the State at the hearing consisted solely of Officer Carter's testimony, which the State argues "overwhelmingly" established that defendant made the inculpatory statement intelligently and voluntarily. Our review of that testimony shows that Officer Carter "sat in" on the interview of defendant and that he testified clearly as to defendant's waiver of his *Miranda* rights, but that his first-hand knowledge as to the voluntariness of defendant's statement did not extend beyond these points. Officer Carter's testimony established that Detective Swanson questioned defendant; however, he was unsure of what questions Detective Swanson asked defendant and his testimony recalled no specific or unique information about the interview with defendant.

¶ 15 Throughout his testimony, Officer Carter discussed what "would have" been done, what procedures "would have" been followed, and what he "believe[d]" happened, rather than testifying about what actually occurred during the interview. Of particular note is the testimony that Detective Swanson "would have" read the statement to defendant after writing it and that defendant "would have" signed it. Overall, Officer Carter's testimony established little more than that he "sat in" on the interview of defendant, but did not provide positive testimony regarding the procedures and questioning that lead to defendant's inculpatory statement.

¶ 16 Although the parties argue the credibility of the Officer Carter's testimony, the record shows that the trial court did not base its ruling on the credibility of this testimony; but, rather on the insufficiency of Officer Carter's testimony. The court noted twice that "there was a crucial witness who did everything who has not been presented," and that it was not merely the

absence of a witness, but the absence of the "witness who did everything in this case;" no mention was made as to Officer Carter's credibility.

¶ 17 Under these circumstances, we find that the State failed to sustain its burden of proof, and, thus, conclude that the trial court did not err in granting defendant's motion to suppress his statement. We, therefore, affirm the judgment of the circuit court of Cook County to that effect.

¶ 18 Affirmed.