2013 Il App (1st) 121342-U

FIFTH DIVISION
March 29, 2013

No. 1-12-1342

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MARIA GARCIA,	)	Appeal
	)	from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 L 12431
	)	
	)	
6653-55 NORTH SEELEY BUILDING	)	Honorable
CONDOMINIUM ASSOCIATION,	)	James Sullivan
	)	Judge Presiding.
	)	
Defendant-Appellant.	)	

JUSTICE TAYLOR delivered the judgment of the court.
Justices Howse and Palmer concurred in the judgment

O R D E R

¶ 1 HELD: Defendant condominium association appealed from a judgment of liability in a slip-and-fall case. The judgment was affirmed where: (1) testimony from association members regarding the condition of the stairs were admissions of a party-opponent, since they had a

responsibility to maintain the property on behalf of the association; and (2) hearsay testimony regarding statements made by paramedics was harmless where it was cumulative of properly admitted testimony.

¶ 2 Defendant, 6653-55 North Seeley Building Condominium Association, seeks reversal of the denial of it's motion for a new trial. Defendant seeks to vacate the jury verdict finding defendant responsible for the unlit stairway in which plaintiff slipped and fell and awarding plaintiff $731,714.06 in a judgment entered January 27, 2012.

¶ 3 I. BACKGROUND

¶ 4 The undisputed facts are that on February 13, 2008, Maria Garcia, plaintiff, went to the condominium of her sister, Delfina Oliveros, located at 6653-65 North Seeley Avenue, Chicago, Illinois. Defendant owns, operates and manages the four unit condominium building. Plaintiff arrived between 6:00 and 7:00 p.m. She went there to drop off furniture. Delfina's unit is located on the second floor of the building. The building has a two story exterior back stairway with two light fixtures, one on each floor. Plaintiff went up the back stairway to enter the Oliveros' condominium. Later, as plaintiff left to return to her car, she exited via the back stairway. She slipped and fell down the stairway and sustained severe injuries. Plaintiff filed a complaint on November 6, 2008, alleging she fell due to defendant's negligence in not lighting the back stairs and failing to remove the ice on the stairs. Defendant denied negligence in an answer filed November 14, 2009. Defendant then filed an affirmative defense of comparative negligence against plaintiff on November 12, 2010. The action went to trial on January 23, 2012.

¶ 5 TRIAL

¶ 6 At trial, plaintiff presented testimony from Maria Alcazar, a neighbor of Delfina Oliveros and Ismael Reza, who accompanied plaintiff to the condominium. Defendant contends that certain statements made by these witnesses were inadmissable hearsay. Plaintiff contends that they are party-opponent admissions and are not hearsay.

¶ 7 Plaintiff, after testifying she fell because "it was completely dark, there was no light," then testified to an alleged admission by her sister, Delfina Oliveros.

¶ 8 Plaintiff's testimony:

"Q. And during the time that you were at St. Francis Hospital did Delfina visit you?

A. Yes.

Q. Did she ever express sorrow, remorse or apologize for the lights being out when you fell?

Defense attorney: Objection, hearsay."

¶ 9 A side bar was held:

"Plaintiff's attorney: The objection is this is hearsay, without a doubt it is hearsay, but this is an exception to the hearsay rule. When a statement is made by one of the homeowners here who is a member of the condominium association and that statement is an admission, that statement is admissible under *Pavlik v. Wal-Mart*, a First District case in 2001."

¶ 10 The court permitted the following testimony:

"Q. What did she say?

A. She was crying when she was telling me that she felt bad I was the one who had fallen because of the lights being out."

¶ 11 Plaintiff then presented the testimony of Maria Alcazar, a neighbor who visited Delfina Oliveros immediately prior to plaintiff's visit. Alcazar testified that she also slipped on the staircase due to inadequate lighting. The following colloquy then occurred:

"Q. After you slipped, did you tell anybody about the lights being off?

Defense attorney: Objection, hearsay. Your Honor.

The court: The witness may answer the question.

The witness: I ask Delfina why the lights were not on, and she say-

Defense attorney: Objection as to what Delfina said, hearsay, Your Honor.

The court: You can answer the question.

The witness: She say she don't have key for the basement on the north side."

¶ 12 The court further allowed Alcazar to testify as to what Daniel Oduze, a resident of the condominium who lived on the first floor, said to her.

"A. That the guy next door, they don't let them go to their basement to turn on the light on.

Q. What did you do with reference to your–

A. I come to the guy and knock this door and tell him can he please turn the lights on.

Defense attorney: Objection, Your Honor, again, as to hearsay. I don't even know who she's talking to.

The court: You may continue to answer the question over the objection.

A. The owner of the next door from Alvaro Oliveros, I come, knock his door. I don't know his name. And I ask him: can you please turn the light on. He say, no, he's busy, he cannot go out."

¶ 13 Lastly, plaintiff presented Ismael Reza, plaintiff's son-in-law who had accompanied plaintiff to Oliveros' condominium. Mr. Reza, after testifying he did not see the lights on, was allowed to testify to comments he allegedly heard the attending paramedics say upon arrival at the scene.

"Q. Did you hear the paramedics ask for someone to turn on the lights?

Defense attorney: Objection, Your Honor. That's hearsay.

The court: The question may stand over the objection. You may answer the question.

The witness: Yes. I heard them."

¶ 14 The witness was then asked follow up questions:

"Q. At some time during the time that you were there, did the lights-those lights in that stairwell come on?

A. Yes, because when the paramedics arrived and they saw there was no light, they asked for light.

Defense attorney: Objection again, Your Honor, this is hearsay.

The court: That may stand.

Q. Did those lights come on after Maria Garcia fell?

A. Yes, because the paramedics asked for them to be lit.

Defense attorney: Same objection, Your Honor, move to strike.

The court: The answer may stand."

¶ 15 At the close of plaintiff's case in chief, defendant presented four witnesses, all residents of the condominiums, who testified to what they saw and or heard at the time of the accident. One testified as to the fact that immediately after the accident they saw the lights on. Another testified that the lights were on when she saw plaintiff on the ground. A third testified that the back porch area was illuminated at the time of the fall.

¶ 16 The jury ultimately returned a verdict in favor of the plaintiff and against the defendant. On January 27, 2012, the circuit court entered a judgement on the verdict in favor of plaintiff. Defendant filed a motion for a new trial which was denied.

¶ 17 II. ANALYSIS

¶ 18 Defendant appeals both the judgment and denial of it's post trial motion alleging it was deprived of a fair trial by the trial court's allowance of hearsay into evidence in error. Plaintiff contends that the testimony at issue was either not hearsay or a hearsay exception. We agree in part and disagree in part but find the error harmless.

¶ 19 Defendant first contends that the statements of plaintiff and Maria Alcazar regarding statements made by condo residents are hearsay and inadmissible because they do not fit an exception. Plaintiff argues they are party-opponent admissions and therefore not hearsay. We agree with plaintiff based on testimony by condominium association members that they shared a duty to maintain the common areas of the building.

¶ 20 Hearsay is an out of court statement offered to prove the truth of the matter asserted and is inadmissible unless it falls within one of the recognized exceptions to the rule. *People v. Lawler*, 142 Ill. 2d 548, 557 (1991). Although the admission of evidence is ordinarily within the sound discretion of the trial court, the initial determination that a particular statement constitutes hearsay is a legal issue which does not require any exercise of discretion, fact finding, or evaluation of credibility. *People v. Aguilar*, 265 Ill. App. 3d 105, 109 (1994). A trial court's determination that a particular statement is hearsay is subject to a *de novo* standard of review. *Halleck v. Coastal Bldg. Maintenance Co.*, 269 Ill. App. 3d 887, 891 (1995); *Aguilar,* 265 Ill. App. 3d at 109.

¶ 21 "It is axiomatic that any statement, whether oral or written, made out of court by a party to an action or attributable to a party to an action, which tends to establish or disprove any material fact in a case, is an admission and is competent evidence against that party in such action." *Werner v. Botti, Marinaccio, & DeSalvo*, 205 Ill. App. 3d 673, 679 (1990). Further, a statement by an agent may constitute an admission on the part of her principal which can be introduced substantively against the principal. *Oak Lawn Trust & Savings Bank v. City of Palos Heights*, 115 Ill. App. 3d 887, 896 (1983); *Werner*, 205 Ill.App.3d at 679; *Bafia*, 258 Ill. App. 3d at 9-10. . Illinois courts have relied on Federal Rules of Evidence 801(d)(2) in finding that a defendant's admissions are not excludable as hearsay. See *People v. Simpson*, 68 Ill. 2d 276 (1977); *People v. Wilson*, 92 Ill. App. 3d 370 (1981); *People v. Chew* 45 Ill. App. 3d 1024 (1977); Illinois Rules of Evidence 801(d)(2) (Ill. R. Evid. 801(d)(2) (eff. Jan. 1, 2011)). That rule provides that admissions by party opponents are not hearsay if the statement is offered against a

party and is "the party's own statement, in either an individual or a representative capacity[.]" *Aguilar*, 265 Ill. App. 3d at 110.

¶ 22 Plaintiff contends that since Oliveros and Oduze were members of the condominium association, their statements are admissions by party-opponents. Defendant argues that there is no evidence that they were association members. Defendant further argues that even if they were members, their statements do not count as admissions because there is no evidence that they had authority to speak on behalf of the organization.

¶ 23 Defendant argues there was no evidence that Oliveros was a homeowner or a member of defendant condominium association. Plaintiff argues it was admitted in the answer to plaintiff's pleadings. Paragraph 2 of plaintiff's complaint filed Nov. 2, 2008 stated: On or before February 13, 2008, the owners of the above condominiums formed a defacto condominium association with Mr. Guillermo Delfina as president. On November 14, 2009, defendant answered the complaint admitting the allegations contained in Paragraph 2 of plaintiff's complaint. In Illinois, "a fact admitted in a verified pleading is a binding judicial admission, which dispenses with the requirement of proof as to that fact." *Los Amigos Supermarket, Inc., v. Metropolitan Bank and Trust Co.*, 306 Ill. App. 3d 115, 124 (1999) (citing *Winnetka Bank v. Mandas*, 202 Ill. App. 3d. 373 (1990)). Throughout the trial, Delfina's membership in the condominium association was never questioned, nor could it reasonably be questioned since she was the wife of the condo association president and a resident of said condo. As to comments made by Oduze, a resident, there was testimony at trial about Oduze being the owner living next door to the Oliveros'. His ownership was never questioned at trial.

¶ 24 The courts of this State have used two different approaches in determining whether a statement by an agent or employee constitutes an admission by her principal or employer, the traditional agency approach and the scope of employment approach.

¶ 25 "Under the traditional agency approach, the proponent of the statement must establish that (1) the declarant was an agent or employee, (2) the statement was made about a matter over which she had actual or apparent authority, and (3) she spoke by virtue of her authority as such agent or employee." *Jenkins v. Dominick's Finer Foods, Inc.*, 288 Ill. App. 3d 827, 834 (1997); *Bafia*, 258 Ill. App. 3d at 9; *Roberts v. Norfolk & Western Ry. Co.*, 229 Ill. App. 3d 706, 713-14 (1992). In applying this rule, many courts found damaging statements to be outside the scope of authority, even in cases involving relatively high-level employees, since employees are seldom hired to make damaging statements. *Halleck v. Coastal Building Maintenance Co.*, 269 Ill. App. 3d 887, 892 (1995); see *Jenkins*, 288 Ill. App. 3d at 834; see also Cleary & Graham's Handbook of Illinois Evidence § 802.9, at 770 (7th ed. 1999) [hereinafter Handbook]. The modern trend in Illinois case law seemingly rejects the traditional agency approach in favor of the scope of employment approach espoused by Rule 801(d)(2)(D) of the Federal Rules of Evidence (Fed.R. .Evid..801(d)(2)(D)), which provides that statements by an employee concerning a matter within the scope of her employment constitute admissions by her employer if the statements are made during the existence of the employment relationship. Handbook § 802.9, at 770-74; see, *e.g.*, *Vojas v. K mart Corp*., 312 Ill. App. 3d 544 (2000); *Halleck*, 269 Ill. App. 3d 887 (1995); *Rinchich v. Village of Bridgeview*, 235 Ill. App. 3d 614 (1992); *Miller v. J.M. Jones Co.*, 225 Ill. App. 3d 799 (1992); Illinois Rules of Evidence 801(d)(2) (Ill. R. Evid. 801(d)(2) (eff. Jan. 1,

2011)). Under the scope of employment approach, the proponent of the evidence need not establish that the employee's statement was specifically authorized by the employer. See *Vojas*, 312 Ill. App. 3d 544; *Halleck*, 269 Ill. App. 3d 887.

¶ 26 The scope of employment approach was first used in *Rinchich*, although this court noted that the traditional agency approach continued to retain adherents. *Rinchich*, 235 Ill. App. 3d at 626-27 (1992). Subsequently, the *Bafia* court seemingly analyzed the evidentiary question at issue in that case using both approaches. *Bafia*, 258 Ill. App. 3d at 9-10. The *Jenkins* court reverted back to the traditional agency approach altogether. *Jenkins v. Dominick's Finer Foods*, 288 Ill. App. 3d 827, 834 (1997). Notwithstanding, we agree with the reasoning in *Rinchich*, as well as *Vojas* and *Halleck*, which eliminated the requirement of proof that the agent's statement was specifically authorized by the agency and focused instead on whether the agent's statements concerned matters within the scope of her agency. *Pavlik v. Wal-Mart Stores, Inc.*, 323 Ill. App. 3d 1060, 1064-65 (2001); *Pietruszynski v. McClier Corporation, Architects And Engineers, Inc.*, 338 Ill. App. 3d 58, 66 (2003).

¶ 27 In order for an agent's statement to be admissible as a "vicarious admission of a party-opponent," however, the party offering the statement must first set forth a proper foundation for its introduction. *Waechter v. Carson Pirie Scott & Company*, 170 Ill. App. 3d 370, 374 (1988). Specifically, the party offering the statement must first establish that (1) the person who made the statement was an agent or employee, (2) the statement was made about a matter over which he had actual or apparent authority, and (3) he spoke by virtue of his authority as such agent or employee. *Cornell v. Langland*, 109 Ill. App. 3d 472, 476 (1982); *Kapelski*, 36 Ill. App. 3d at

42. Obviously, agents or employees are seldom given specific authority to make statements which are damaging to their principal, but such statements will be admitted if they concern matters within the scope of the agent or employee's employment. *Miller v. J.M. Jones Co.*, 225 Ill. App. 3d 799, 803 (1992); *Bafia*, 258 Ill. App. 3d at 9.

¶ 28 Plaintiff argues that the statements made by Delfina Oliveros and Daniel Oduze are party-opponent admissions since they were members of the condo board with personal responsibilities to maintain the common area, their statements about the common areas were within their scope of knowledge and employment. In support of her proposition plaintiff relies on *Pavlik v. Wal-Mart Stores, Inc.,* 323 Ill. App. 3d 1060 (2001). In *Pavlik*, plaintiff and her father were at defendant's store were while walking down an aisle plaintiff slipped and fell on a liquid substance. Plaintiff testified that after she fell, one of the defendant's employees, someone "like a store clerk" stated that the puddle of conditioner should have been cleaned up before. Her father testified that an employee remarked, in reference to the puddle, "oh, she was supposed to clean that up and she didn't." Plaintiff testified that the statements at issue were made by an employee of the defendant on the day of the plaintiff's fall. Generally, an employee's knowledge of a dangerous condition or spilled substance on the premises is considered sufficient to impute notice to a defendant employer, because an employee has a responsibility either to correct the unsafe condition or clean the spilled substance from the floor, or report the problem to her superiors. *Pavlik*, 323 Ill. App. 3d at 1066; see also *Perminas v. Montgomery Ward & Co.*, 60 Ill.2d 469, 474-75 (1975). Given that the defendant's employee should have either cleaned the spill or reported the condition to her superior, the statements at issue concerning her prior

knowledge of the existence of the spill fell within the scope of her employment. Pavlik, 323 Ill. App. 3d at 1066; *Vojas*, 312 Ill.App.3d at 548. In *Pavlik*, the court held that because the statements at issue were made by the defendant's employee during the employment relationship about a matter within the scope of employment, the statements fell within the party admission exception to the hearsay rule. *Pavlik*, 323 Ill. App. 3d at 1066. We agree with plaintiff and find *Pavlik* analogous to the instant case. Because the statements at issue were made by the defendant's agents about a matter within the scope of their agency, namely the condition of the common areas, the statements are party-opponent admissions. Therefore, Delfina and Oduze were agents of a party-opponent and their comments are admissions.

¶ 29 Defendant next argues, even if Delfina Oliveros and Daniel Oduze were members of the board, there is no evidence that they had the authority to speak on behalf of the association. Defendant relies on *Thomas* for the proposition that mere membership in an association does not allow that person to bind the association and that authority is required. *Thomas v. Rutledge*, 67 Ill. 213 (1873). In *Thomas,* it was alleged that the admissions of a building committee appointed by the congregation were competent evidence against the trustees of an incorporated church society. However, the supreme court held that the committee was comprised of special agents for a special purpose, such that they could not do or say anything to bind the trustees beyond that purpose. *Thomas*, 67 Ill. 213.

¶ 30 Furthermore, as has been discussed, Illinois law adheres to the reasoning which eliminated the requirement of proof that the statement was specifically authorized by the employer and adopts the view whether the statement was within the scope of her employment.

Vojas v. K Mart Corp., 312 Ill. App. 3d at 548. In the instant case there was sufficient evidence by both plaintiff's witnesses and defendant's witnesses at trial that the condo owners, as members of the small four unit condo association, took care of the common areas and were responsible for mowing, lighting, shoveling, replacing light bulbs, etc. Defendant's witness, Alvero Oliveros, testified that when he bought his condominium he understood that the association maintained the common areas with the other owners. He also testified he did work around the property, such as cutting grass and changing light bulbs. Another defense witness, condominium resident Fanny Ochoa, testified at trial that when she and her husband bought their condo, they knew they were becoming members of the condominium association that were responsible for the common areas. Also, Mamello Tekateka, a resident of a condominium, testifying for the defense, stated she was aware her mother, as an owner, shared expenses and duties with the other owners.

¶ 31 Therefore, the case at hand is not an agency relationship based solely on membership, as defendant argues. Rather, it is based on the fact testified to at trial that the four unit owners share responsibilities to pay bills and share duties as to the maintenance of the common areas. Thus, their comments about conditions of the common areas are binding as admissions. Because statements at issue were made by the defendant's agent during employment or agency relationship about a matter within the scope of employment or agency, the condition of the common area, the statements are admissible into evidence as party-opponent admissions..

¶ 32 Defendant's second major contention is that the trial court erred in admitting hearsay testimony by Ismael Reza. Plaintiff and defendant agree the statements by Reza, in reference to

the paramedics' comments about the stairway being lit, are hearsay. Plaintiff argues they are exceptions to the hearsay rule as excited utterances. Defendant disagrees and argues they do not fit the excited utterance exception. We agree with defendant but find the error is harmless.

¶ 33 Statements relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition, referred to as "spontaneous declarations," are also an exception to the rule against hearsay. See *People v. Williams*, 193 Ill. 2d 306, 352 (2000); Illinois Rules of Evidence 803(2) (Ill. R. Evid. 803(2) (eff. Jan. 1, 2011)). For a hearsay statement to be admissible under this exception, (1) there must have been an occurrence that was sufficiently startling to produce a spontaneous and unreflecting statement, (2) there must have been an absence of time between the occurrence and the statement for the declarant to fabricate the statement, and (3) the statement must relate to the circumstances of the occurrence. *Williams,* 193 Ill. 2d 352. In applying these elements to determine whether a hearsay statement is admissible, a court should consider the totality of the circumstances, including " 'the nature of the event, the mental and physical condition of the declarant, and the presence or absence of self-interest.' " *Id*; quoting *People v. House*, 141 Ill. 2d 323 (1990). Additionally, we have held that we will not reverse a trial court's decision to deny the admission of evidence under the excited utterance exception unless the trial court abused its discretion. *William,* 193 Ill. 2d at 352.

¶ 34 As defined by case law, the basis of this exception is that "such statements are given under circumstances that eliminate the possibility of fabrication, coaching or confabulation." *Idaho v. Wright*, 497 U.S. 805, 820 (1990). The rationale behind this exception is that the

startling event suspends the declarant's process of reflective thought, thereby reducing the likelihood of fabrication. *State v. Harrell*, 348 Md. 69 (1997). In *University of Maryland Medical System Corp., v. Malory*, 143 Md. App. 327, 335 (2001), after being called to a home to resuscitate a child, the paramedics and firefighters who responded to the call noticed a strong chemical, solvent-like, toxic odor coming from the child's mouth and nose. They attempted to determine what toxic substance, if any, had been ingested by the child. *Maryland*, 143 Md. App. at 336. By the very nature of their investigation, they were engaging in reflective thought; therefore, this exception does not apply. *Maryland*, 143 Md. App. at 351-352.

¶ 35 Plaintiff argues the statement by paramedics to turn on the lights when they arrived at the scene was an excited utterance. Defendant argues the injuries to plaintiff were not life threatening and the condition of plaintiff was, for Chicago paramedics, somewhat routine and not a startling event. We agree with defendant. Though the instant case was an emergency situation, the injuries to plaintiff, consisting of damage to her knee, although severe, were not life threatening. The paramedics were responding to a call were someone had fallen. Paramedics respond to such calls daily. Thus, plaintiff's accident did not constitute a startling event for a paramedic and therefore the excited utterance exception did not apply. Therefore, the comments were admitted into evidence in error.

¶ 36 Decisions on the admission of evidence are largely matters within the discretion of the trial judge. *Jackson v. Pellerano*, 210 Ill. App. 3d 464 (1991). However, erroneous evidentiary rulings will not support a reversal unless the error was prejudicial and affected the outcome of the trial. *Jackson*, 210 Ill. App .3d at 471. In other words, the judgment will not be reversed if

"no harm has been done." *Id.*; *Bafia*, 258 Ill. App. 3d at 10. Where it appears an error did not affect the outcome of the trial, or where the reviewing court can see from the entire record that the error did not result in substantial prejudice, the judgment will not be disturbed. *Cairns v. Hansen*, 170 Ill. App. 3d 505, 511(1988). The burden is on the party seeking reversal to establish prejudice. *Burns*, 237 Ill. App. 3d at 938; *Halleck*, Ill. App. 3d at 894-95.

¶ 37 In view of the fact that the testimony about the paramedics comments was hearsay and did not fit an exception to the hearsay rules, we find the admission of the comments into evidence was error, but it was harmless error. Since there was already testimony in evidence regarding the condition of the lights, the inclusion of the paramedics' comments were cumulative and thus not prejudicial to defendant. We conclude that defendant was not prejudiced by the admission of the paramedics' comments and that such error does not warrant reversal.

¶ 38 Defendant next argues the competing evidence was so close that to allow these statements into evidence was to deprive defendant of a fair trial. We disagree. We are reluctant to intervene in the province of the jury in determining the credibility of witnesses and the reliability of evidence. Defendant relies on *Redmon*, alleging that hearsay statements relating directly to the crux of the case warrant reversal. *Redmon v. Austin*, 188 Ill. App. 3d 220 (1989). However, in distinguishing *Redmon* from the instant case, in *Redmon*, the testimony by a rescue worker about what someone had told him could not be characterized as an admission by a party opponent or declaration against interest or a spontaneous declaration because the rescue worker admitted he did not know who had given him the statement. *Redmon*, 188 Ill. App. 3d at 225. The court held since the identity of the declarant was unknown, there was simply no basis for characterizing the

statement in question as an admission by a party opponent or a declaration against interest. *Id.* The problem is that nobody knew who made the declaration. *Id.* Therefore, the court found the admission of the statement could not be justified under the spontaneous declaration exception to the hearsay rule. *Id.*

¶ 39 In the instant case we also find the admission of the statement as an excited utterance or spontaneous declaration was not justified. However, in distinguishing *Redmon*, here we know who made the comments. Moreover, the comments were cumulative of other testimony. Thus, the erroneous admission was harmless beyond a reasonable doubt, as noted above.

¶ 40 Defendant also relies on *Stricklin* for the proposition that an admission in a case close enough on the facts so that a jury could easily decide either way, whether any substantial error which might have tipped the scales in favor of the successful party calls for reversal. *Stricklin v. Chapman*, 197 Ill. App. 3d 385 (1990). In *Stricklin*, a police officer was asked to testify to his opinion and conclusion as to the point of impact in a collision case. The court held the officer's testimony violated a prior order *in limine* and also amounted to little more than speculation and conjecture because the physical evidence was not sufficient to provide basic data needed to reconstruct the occurrence and was therefore a reversible error. *Id.* at 390. Such is not the case here, where eyewitnesses testified that the stairway in question was unlit.

¶ 41 III. CONCLUSION

¶ 42 For the foregoing reasons, we affirm the trial court’s judgment.

¶ 43 Affirmed.