2014 IL App (1st) 130117-U

SECOND DIVISION
November 18, 2014

No. 1-13-0117

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County
	)	
v.	)	No. 08 CR 10375
	)	
TREMELL STEVENS	)	Honorable
	)	Brian Flaherty,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE PIERCE delivered the judgment of the court.
Justices Neville and Liu concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in admitting a witness's prior inconsistent statements as substantive evidence.

¶ 2 Following a jury trial, defendant Tremell Stevens was convicted of first degree murder (720 ILCS 5/9-1 (West 2008)) and was sentenced to 65 years' imprisonment. On appeal, defendant argues that he was denied a fair trial where the State introduced multiple prior inconsistent statements from a key witness that were unnecessarily duplicative of each other and amounted to inadmissible prior consistent statements. For the following reasons, we affirm the

judgment of the trial court.

¶ 3 BACKGROUND

¶ 4 Defendant is not challenging the sufficiency of the evidence against him at trial and therefore we discuss only those facts relevant to the disposition of this appeal. Defendant was charged with the May 1, 2008 murder of Deontae Patterson. Defendant's first trial began on January 31, 2012. Floyd Gaston testified as a key witness for the State. Gaston testified that he saw defendant shoot Patterson four times and then walk away, only to return to shoot Patterson two more times as he screamed for help. The trial ended in a hung jury and subsequent mistrial.

¶ 5 Defendant's second trial began on October 12, 2013. At the second trial, Gaston "flipped" and testified that he could not remember the events surrounding the May 1, 2008 murder. Gaston testified that he did not remember being at the police station on May 3, 2008, speaking with Detective Padron and his partner, speaking with Assistant State's Attorney (ASA) D'Angelo, making a statement, agreeing to a written statement, or reading and signing his written statement. Gaston did remember testifying at the 2012 trial but did not remember essentially any of his testimony. The State asked Gaston specific questions regarding his testimony at the first trial.

¶ 6 After Gaston testified, ASA D'Angelo published defendant's May 3, 2008 statement to the jury. In the statement, Gaston stated that defendant pulled out a gun and shot Patterson four times. Then he ran away, but stopped and returned, and shot Patterson two more times. Detective Padron then testified that when he and his partner interviewed Gaston on May 3, 2008, he told the detectives that defendant shot Patterson four times and then returned to Patterson, who was yelling for help, and shot him two more times at point blank range.

¶ 7 After hearing all of the evidence in the case, the jury found defendant guilty of first degree murder and also found that defendant personally discharged a firearm that proximately caused Patterson's death. Defendant was sentenced to 40 years' imprisonment with an add-on of 25 years for personally discharging a firearm for a total of 65 years' imprisonment. It is from this judgment that defendant now appeals.

¶ 8 ANALYSIS

¶ 9 The sole issue defendant raises on appeal is that the State should not have been allowed to introduce a recounting of his prior statements in which he identified defendant as the shooter because the admission of multiple nearly identical prior inconsistent statements amounts to inadmissible prior consistent statements.

¶ 10 Section 115-10.1(c) of the Code of Criminal Procedure (Code) allows a prior inconsistent statement to be offered as substantive evidence if the witness is subject to cross-examination and the statement: "(1) was made under oath at a trial, hearing, or other proceeding, or (2) narrates, describes, or explains an event or condition of which the witness had personal knowledge, and (A) the statement is proved to have been written or signed by the witness [.]" 725 ILCS 5/115-10.1(c) (West 2010). When a prior inconsistent statement meets the basic requirements of reliability under section 115-10.1 of the Code, either party may introduce the prior inconsistent statement as substantive evidence. *People v. Santiago*, 409 Ill. App. 3d 927, 932-33 (2005). Section 115-10.1 seeks to "prevent a turncoat witness from merely denying an earlier statement when that statement was made under circumstances indicating it was likely to be true." *People v. Thomas*, 354 Ill. App. 3d 868, 882 (2004).

¶ 11 While not arguing against the admissibility of the statements under section 115-10.1,

defendant argues that allowing defendant's prior inconsistent statements essentially resulted in the admission of prior consistent statements, which was improper because those statements bolstered Gaston's credibility.

¶ 12 As defendant recognizes, this Court has considered and rejected similar arguments regarding the admissibility of multiple prior statements that are inconsistent with the witness' trial testimony but consistent with each other. See *People v. Donegan*, 2012 IL App (1st) 102325 ¶¶ 57–63; *People v. White*, 2011 IL App (1st) 092852, ¶¶ 49–54; *People v. Johnson*, 385 Ill. App. 3d 585, 607–08 (2008); see also *People v. Santiago*, 409 Ill. App. 3d 927 (2011); *People v. Perry*, 2011 IL App (1st) 081228; *People v. Maldonado*, 398 Ill. App. 3d 401 (2010).

¶ 13 In *People v. Johnson*, 385 Ill. App. 3d 585, 589 (2008), the defendant argued on appeal that the trial court abused its discretion when it allowed the State to introduce the prior statements of a State witness. The State had introduced a prior handwritten statement given to an assistant state's attorney and signed by the witness, as well as a prior statement the witness made to the grand jury. *Id*. The defendant asserted that the introduction of the prior inconsistent statements violated the rule against prior consistent statements. This court rejected defendant's argument stating that the defendant was "confusing apples with oranges, or more specifically, inconsistent statements with consistent ones." *Id*. The court found that the consistency of a statement is measured against the trial testimony and not against prior statements that conflict with trial testimony. *Id*.

¶ 14 More recently, in *People v. White*, 2011 IL App (1st) 092852, ¶ 15, six occurrence witnesses were confronted with their prior written statements and grand jury testimony implicating the defendants as the shooters following their testimony at trial that they did not see

the defendants shooters who were on trial for first-degree murder. On appeal, the defendants argued that the trial court erred in admitting the statements because "the rule barring prior consistent statements prevented admission of any other inconsistent statements that were consistent with the first" and requested that the court "create a bright-line rule prohibiting admission of any prior inconsistent statement under section 115–10.1, where that statement is consistent with a witness's previously admitted prior inconsistent statement." *Id*. ¶ 50.

¶ 15 Recognizing the "inherent tension between the admission of multiple prior inconsistent statements as substantive evidence under section 115–10.1 and the rule barring admission of prior statements that bolster trial testimony" this court found that "[w]hile a blanket prohibition (with limited exceptions) makes sense for prior consistent statements, applying that same general bar to inconsistent statements that are consistent with each other would frustrate the legislature's goal [in enacting section 115–10.1] of discouraging recanting witnesses." *Id*. ¶¶ 51, 53. As such, the *White* court ruled:

> "Drawing on the general rule prohibiting introduction of prior consistent statements, defendants claim that once the court admitted one prior inconsistent statement, the court was prohibited from admitting a second inconsistent statement that was consistent with the first. As defendants acknowledge, this court has rejected the same argument in prior cases. *People v. Santiago*, 409 Ill. App. 3d 927 (2011); *People v. Perry*, 2011 IL App (1st) 081228; *People v. Maldonado*, 398 Ill. App. 3d 401, 423 (2010); *People v. Johnson*, 385 Ill. App. 3d 585, 608 (2008)." *White*, 2011 IL App (1st) 092852, ¶ 49.

¶ 16 We further found that even if the second inconsistent statement could be considered cumulative, the defendants failed to cite to any authority that would support a finding that the

prejudicial effect of a substantively admitted prior inconsistent statement substantially outweighed its probative value because it was repetitive of a previously admitted prior statement. *White*, 2011 IL App (1st) 092852, ¶ 44. In so finding we noted that this court "has found that even when the State presented a prior inconsistent statement that was 'unnecessarily repetitive' of another, the repetition did not rise to the level of prejudice." *Id*. (citing *People v. Fields*, 285 Ill. App. 3d 1020, 1028 (1996)).

¶ 17 We find no meaningful reason to depart from the holding in *Johnson* and its progeny, nor has defendant provided us with a persuasive argument to do to. We therefore reject defendant's argument.

¶ 18 Defendant additionally argues that when section 115–10.1 of the Code is considered in light of the principles enunciated in *People v. Dabbs*, 239 Ill. 2d 277 (2010), *Johnson* and its progeny cannot stand. Defendant claims that because a prior statement that has been substantively admitted under section 115-10.1 becomes the functional equivalent of trial testimony, the admission of more than one nearly identical statement runs afoul of the long-standing common law prohibition against prior consistent statements.

¶ 19 In *Dabbs*, following a jury trial wherein the defendant's ex-wife testified that the defendant abused her, the defendant was convicted of domestic battery against his girlfriend. The ex-wife's testimony was allowed pursuant to section 115–7.4 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115–7.4 (West 2008)), which allows the admission of evidence of a defendant's other acts of domestic violence in a domestic violence prosecution. On appeal, the defendant argued that section 115-7.4 was unconstitutional. This court rejected the defendant's argument. *Id*. at 291.

¶ 20 Before our supreme court, *Dabbs* argued that, in enacting section 115–7.4, the legislature made evidence of a defendant's other acts of domestic violence admissible "without regard to its relevance or to the balance of probative value and risk of undue prejudice." *Id*. at 288. The court rejected this argument finding that section 115–7.4 had abrogated, in part, the Illinois common law evidentiary rule that evidence of other crimes is inadmissible to show a defendant's propensity to commit crimes. *Id*. at 284. Furthermore, the court noted that the legislature "specifically provided that the other-crimes evidence 'may be considered for its bearing on any matter to which it is relevant' " (*Id*. at 290 (quoting 725 ILCS 5/115–7.4(a) (West 2008))) and that "the statute lists three factors to be considered '[i]n weighing the probative value of the evidence against undue prejudice to the defendant' in addition to any other factors the court might ordinarily consider." *Id*. Because of this, the *Dabbs* court held that "the plain meaning of section 115–7.4 of the Code is that evidence of a defendant's commission of other acts of domestic violence may be admitted in a prosecution for one of the offenses enumerated in the statute, so long as the evidence is relevant and its probative value is not substantially outweighed by the risk of undue prejudice." *Id*. at 290–91 (quoting 725 ILCS 5/115–7.4(a) (West 2008)). Noting that the rules of evidence function as a unified scheme, rather than individually, the court explained that "the threshold requirement of relevance would apply to the admission of evidence even if the legislature had not specifically mentioned this requirement." *Id*.

¶ 21 We find defendant's reliance on *Dabbs* to be misplaced because the introduction of several prior inconsistent statements under section 115-10.1 is proper. *White*, 2011 IL App (1st) 092852, ¶ 49. While we agree with defendant that *Dabbs* stands for the proposition that a statutory exception like section 115-10.1 does not nullify other common-law rules, a prior

inconsistent statement admitted as substantive evidence pursuant to section 115–10.1 does not replace a witness' in-court testimony. *People v. McCarter*, 2011 IL App (1st) 092864, ¶ 23. Instead, the admissibility of a prior inconsistent statement as substantive evidence depends upon a comparison of the out-of-court statement to the actual in-court testimony. *Maldonado*, 398 Ill. App. 3d at 423. Therefore, the admission of several section 115–10.1 statements, each inconsistent with a witness' trial testimony, does not nullify the common law rule against admission of prior consistent statements and does not violate the principle announced in *Dabbs*.

¶ 22 CONCLUSION

¶ 23 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 24 Affirmed.