No. 2—09—0707
Order filed March 4, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 07—CF—1005
BOB A. BRINSON,	)	Honorable Daniel B. Shanes,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

Held: The trial court did not abuse its discretion in excluding certain evidence; some evidence was irrelevant in the absence of any evidence of a condition; other evidence was irrelevant or inadmissible hearsay, and defendant could not now rely on bases for admission not presented to the trial court.

Following a jury trial in the circuit court of Lake County, defendant, Bob A. Brinson, was found guilty of possession of a controlled substance with intent to deliver (720 ILCS 570/401(a)(2)(A) (West 2006)). The trial court adjudicated defendant to be an habitual criminal (720 ILCS 5/33B—1 (West 2006)) and sentenced him to life imprisonment. He argues on appeal that he was deprived of the opportunity to present a complete defense. We affirm.

Defendant was arrested after police executed a warrant to search his apartment on Pioneer Road in Waukegan. The complaint for the search warrant incorporated the affidavits of Chris Rohloff, a detective with the Waukegan police department, and an informant identified as "J. Doe." The informant averred that he or she had recently been inside defendant's apartment and had "observed numerous small clear plastic knotted baggies containing amounts of rock like substances." The search took place on March 21, 2007.

Evidence admitted at trial establishes that numerous plastic baggies containing cocaine were found in the pocket of a red leather jacket in defendant's bedroom closet. A baggie containing trace amounts of cocaine was found on the nightstand in defendant's bedroom. A plate and a razor blade were also found on the nightstand. The plate had a white residue on it. Inside the nightstand, the police found an electronic scale. Other items found in the apartment included a box of sandwich baggies, a tupperware bowl containing a large number of baggies, a cup with a white residue inside it, ledgers, and nearly $800. Detective Rohloff was part of the team that conducted the search. He testified that defendant was at home when the search was conducted. Detective Rohloff spoke with defendant at the apartment. Defendant indicated that, earlier that day, he had seen Officer Rohloff and another officer conducting surveillance at the apartment complex and speaking with the manager's son. Defendant suspected that his apartment would be raided and he put the cocaine in the pocket of a jacket, planning to take it to his girlfriend's residence. Before he could do so, however, he fell asleep after taking medication for bipolar disorder. Defendant refused to put his statement into writing. It was Detective Rohloff who discovered the cocaine in the pocket of the red leather jacket. He testified that he found only men's clothing in the closet. Another Waukegan police officer, John Oliver, testified as an expert in the area of distribution of narcotics. Based on

the amounts of cocaine found in defendant's apartment, the manner in which it was packaged, the amount of money found in the apartment, and the presence of items used in the distribution of drugs (the electronic scale, razor blade, ledgers, and baggies), Officer Oliver formed the opinion that whoever possessed the cocaine intended to distribute it.

Defendant presented the testimony of several witnesses in an attempt to establish that the cocaine, and the coat in which it was found, belonged to a woman who had been residing, without permission, in an apartment in a building located at 2241 Hervey Avenue, in North Chicago. Defendant worked as a maintenance man at the building. The building's owner testified that he asked defendant to get the woman out of the apartment. Ronald Brown, who had done odd jobs at the building, testified that he and his brother Ralph went to the apartment with defendant early in March 2007. They cleaned out the apartment, removing a number of black garbage bags filled with various articles of clothing, including several leather coats. One was a woman's coat with a fur collar and a "red stitch on it." Ronald took the garbage bags to defendant's apartment and placed the coat in the closet in defendant's bedroom. One of the smaller bags split open, and Ronald saw a cosmetics case. Defense counsel showed Ronald the electronic scale recovered from defendant's apartment and inquired whether it could have been the item that Ronald saw when the bag split open. Ronald testified that he thought it was. At defendant's direction, Ronald put the item in a drawer. Ralph Brown testified that he helped remove 15 to 20 garbage bags from the woman's apartment. One of defendant's neighbors testified that she had been in defendant's apartment about a week before the police searched it. She observed a number of garbage bags filled with women's clothing along one wall of the apartment. Defendant told her that the clothing belonged to his ex-spouse.

Defendant subpoenaed North Chicago police officers Flores and Sain to testify on his behalf. When defendant's attorney alerted the trial court that the officers had failed to appear in response to the subpoenas, the trial court indicated that it would not hesitate to issue a body attachment if necessary. Defendant advised the trial court that Officer Flores would testify that a woman named Arlene Martin reported that a theft had occurred at 2241 Hervey on March 5 or March 6, 2007. According to defendant's attorney, Officer Flores "did follow-up" with defendant in connection with Martin's report. Officer Sain would testify that Martin reported that on March 5, 2007, defendant "accosted" her at 2241 Hervey. The trial court concluded that the testimony would be inadmissible. No order was entered to secure the attendance of either witness, and defendant presented his case without their testimony.

Defendant argues that the trial court deprived him of his constitutional right to present a defense, by: (1) barring him from cross-examining Detective Rohloff about the basis for the issuance of the search warrant that led to the discovery of cocaine in defendant's apartment and (2) prohibiting him from presenting the testimony of Officers Flores and Sain. The rulings will be considered *seriatim*.

Defendant sought to elicit testimony from Detective Rohloff that the search warrant was obtained on the basis of information from a single individual and was not the result of a long-term investigation or reports of "any odd traffic coming out of [defendant's] apartment." The State objected on relevance grounds. The trial court ruled that the relevance of the evidence was "outweighed by its remoteness and speculative nature."

Although defendant acknowledges that rulings on the admissibility of evidence are generally reviewed under an abuse-of-discretion standard (*e.g.*, *People v. Wheeler*, 226 Ill. 2d 92, 132 (2007)),

he maintains that the issue here is whether he was deprived of his constitutional right to present a defense. Without citing any pertinent authority, defendant contends that "the issue of whether the defendant was afforded the opportunity to present a complete defense is a question of law and should be reviewed *de novo*." The United States Supreme Court has held that the right to present a complete defense encompasses the right to present evidence supporting the defendant's version of the facts. *Washington v. Texas*, 388 U.S. 14, 19 (1967). The right is violated by arbitrary rules of evidence—rules that exclude important defense evidence and do not serve any legitimate interest. *Holmes v. South Carolina*, 547 U.S. 319, 325 (2006); see also *Crane v. Kentucky*, 476 U.S. 683 (1986); *Washington*, 388 U.S. at 22-23. The question here is not whether any general rule of evidence is arbitrary, but whether an unquestionably valid rule of evidence (the relevancy requirement) was applied in an arbitrary manner. Even assuming, *arguendo*, that a possible misapplication of the relevancy requirement implicates the constitutional right to present a defense, it does not follow that the trial court's evidentiary ruling must receive *de novo* review. The core concern in *Holmes*, *Crane*, and *Washington* is the arbitrary limitation of an accused's ability to apprise the jury of his or her version of the facts. The abuse-of-discretion standard is a sufficient safeguard against such arbitrariness regardless of whether the trial court's ruling is examined in constitutional terms or under ordinary evidentiary principles. See *People v. Kladis*, 403 Ill. App. 3d 99, 105 (2010), *leave to appeal granted*, 238 Ill. 2d 664 (2010) (quoting *People v. Ortega*, 209 Ill. 2d 354, 359 (2004)) ("A trial court abuses its discretion when its decision is 'fanciful, arbitrary, or unreasonable to the degree that no reasonable person would agree with it.' "). Therefore, we see no reason to subject a trial court's evidentiary rulings to *de novo* review merely because the defendant has attached a constitutional label to a ruling on the admissibility of evidence.

The trial court did not abuse its discretion in barring inquiry into the basis for the search warrant. Our supreme court has observed that "[e]vidence is considered relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of an action either more or less probable than it would be without the evidence. [Citation.] However, a trial court may reject evidence on the grounds of relevancy if the evidence is remote, uncertain or speculative." *People v. Morgan*, 197 Ill. 2d 404, 455-56 (2001). Defendant argues that evidence that the search warrant was based on information obtained from a single informant would have supported a defense theory that Martin framed defendant, knowing that police would find cocaine in her coat when they searched defendant's apartment. The theory presupposes not only that the search warrant was based on information from a single individual, but also that the individual in question was Martin. In responding to the State's objection, defendant's attorney asserted that he knew that the search warrant was based on information obtained from Martin. However, he offered no evidence to support the assertion. The identity of the informant is a matter of pure speculation.

The conditional-relevance doctrine provides that "[i]f the relevance of a piece of evidence depends on the truth of some other fact, the piece of evidence is admissible if there is sufficient evidence to support a finding by a reasonable juror that the factual condition has been fulfilled." *People v. Bruce*, 299 Ill. App. 3d 61, 65 (1998). The fact that the search warrant was predicated on information from a single individual could be relevant only if that individual was Martin. In the absence of evidence that Martin was the source of the information leading to the issuance of the search warrant, testimony regarding the basis for the warrant was properly excluded.

Defendant next argues that the trial court erred in ruling that testimony by Officers Flores and Sain regarding investigations of complaints made by Martin would be inadmissible. As noted,

defendant subpoenaed both officers, but neither appeared at trial. The trial court declined to enforce the subpoenas after concluding that the testimony would be inadmissible. Defendant sought to call Officer Flores to testify that Martin had reported a theft from the apartment on Hervey Avenue. Officer Flores would testify that he spoke with defendant in connection with the investigation. Defendant's attorney indicated that he wished to admit this evidence "for the fact that there was an investigation and a complaint by Ms. Martin and [defendant] was contacted, which is relevant to our whole course of events being the removal of her items taken to the Pioneer arrest [*sic*] that the alleged drugs were found in a coat owned by Ms. Martin." Defendant sought to call Officer Sain to testify that Martin reported that on March 5, 2007, defendant accosted her at the apartment on Hervey Avenue. The trial court concluded that the proposed testimony was hearsay and was "barely tangentially relevant."

The hearsay rule bars the introduction of an out-of-court statement used to prove the truth of the matter asserted. *People v. Mims*, 403 Ill. App. 3d 884, 897 (2010). During the proceedings below, defendant's attorney offered no explanation of how Martin's complaint that defendant accosted her had any bearing on defendant's guilt or innocence. Martin's theft complaint might tend to bolster defendant's claim that the coat in which the cocaine was found was taken from the Hervey Avenue apartment, but only if the complaint were admitted for the truth of the matter asserted—that a theft actually occurred. The hearsay rule bars admission of the testimony for that purpose. Defendant contends that the evidence was admissible under the "state-of-mind" exception to the hearsay rule (see generally *People v. Munoz*, 398 Ill. App. 3d 455, 479 (2010)) and that it was relevant "to show the animus between Arlene Martin and [defendant]." Defendant contends that he should have been allowed to present evidence that Martin "had an ax to grind with [defendant]

because he had confiscated her drugs and belongings" and that Martin had a motive to frame defendant. Defendant did not make these arguments in the trial court and he has therefore forfeited these grounds for admission of the evidence. *Salick v. Tassone*, 236 Ill. App. 3d 548, 555 (1992). "When a party offers evidence, it must also offer all possible theories under which the evidence may be admissible since it is not the trial court's duty to sort out such theories; the trial court's duty extends only to ruling upon the arguments presented." *Id.* Defendant cannot be heard to argue that, by excluding the evidence, the trial court deprived him of the right to present a defense, when defendant never advised the trial court of the specific defense theory that might have made the evidence admissible.

We note that, even if the testimony of Rohloff, Sain, and Flores had been admissible, it could not have changed the outcome of defendant's trial. Evidence suggesting that Martin "had an ax to grind" with defendant is hardly proof that she framed him. The centerpiece of the defense theory—the notion that Martin's leather coat was a sort of Trojan horse in which her cocaine introduced itself into defendant's apartment—has scant evidence to support it. There was no testimony linking the jacket in which the cocaine was found to Martin. Detective Rohloff testified that the cocaine was found in a red leather jacket. That it was a man's jacket may be deduced from the officer's testimony that all the clothing in the closet where he found the jacket was for men. Detective Rohloff's description does not match the woman's leather coat with a brown fur collar that Ronald Brown found in a bag of clothing taken from the Hervey Avenue apartment. Notably, Brown did not testify that the coat was red; he indicated that it had a "red stitch on it." With or without the testimony that defendant hoped to elicit, the defense theory was founded almost entirely on speculation.

For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

Affirmed.