No. 2—09—1228
Order filed May 27, 2011



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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court of Kane County. |
| Plaintiff-Appellee, | ) | |
| v. | ) | No. 07—CF—1112 |
| DOUGLAS A. CAMERON, | ) | Honorable Timothy Q. Sheldon, |
| Defendant-Appellant. | ) | Judge, Presiding. |

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JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Bowman concurred in the judgment.

**ORDER**

*Held*: (1) The trial court did not abuse its discretion in excluding a hearsay statement: only two of the four *Chambers* factors supported admission as a statement against penal interest; the statement was not a spontaneous declaration, as the declaration did not relate to the startling occurrence and the offer of proof did not evince that the declarant was under the excitement of the occurrence; (2) we vacated defendant's trauma-center fee, which was not statutorily authorized on a residential burglary conviction.

Following a bench trial, defendant, Douglas A. Cameron, was convicted of residential burglary (720 ILCS 5/19—3(a) (West 2006)). He appeals, contending that the trial court erred by refusing to consider an out-of-court statement that the declarant, and not defendant, was responsible

for hiding a rifle taken in the burglary. Defendant contends that the statement was admissible either as a statement against penal interest or as an excited utterance. Alternatively, defendant contends that the trial court lacked statutory authority to impose a $100 trauma center fee. We affirm in part and vacate in part.

Defendant was charged with burglarizing the apartment of Sean Scheffler. The following evidence was adduced at trial. Scheffler testified that he returned home from work one day and discovered that a .22-caliber rifle that he kept in a closet was missing. Scheffler initially suspected Mike Elkington, a neighbor with whom he had had problems in the past. He went to Elkington's apartment, but did not find the rifle. Elkington testified that he worked at the Meijer store in St. Charles, where he was friends with several people, including Margot Laag.

Laag testified that she and defendant shared a house in Sycamore in early 2007. One day in April 2007, she talked to Elkington about a PlayStation of his that was missing. Elkington in turn talked to defendant, who said that he would "check things out" in Scheffler's apartment. After work that night, Laag and defendant went to Scheffler's apartment building. Defendant went inside while she waited in the car. Defendant eventually came out with something under his shirt, although Laag never saw what it was. Defendant asked her to "pop the trunk," which she did. Defendant then put the object in the trunk and they drove back to Sycamore.

Two or three days later, Laag saw a rifle in a garbage can in the garage while defendant was showing the rifle to somebody. Laag became angry about the rifle's presence and told defendant to get rid of it. Later, he told her that he had put the rifle in the attic. On April 20, police responded to a domestic violence report at the Sycamore house. Laag was initially arrested and handcuffed. She told police that defendant had a rifle in the attic and gave them consent to search.

In his case, defendant called his friend Dustin Needham. Needham recalled that, a few hours after the domestic violence incident, Laag was at his apartment discussing the incident with his girlfriend, Laurene Wright. Needham was in a loft above where the women were talking and overheard their conversation. The trial court sustained the State's hearsay objection to the substance of the conversation.

Defense counsel thus made an offer of proof, as follows:

> "[T]he testimony would be that Margot Laag said to Laurene [Wright] within hearing distance of Dustin Needham that in fact, she had—uhm—said that she took—that she was hiding the rifle at the behest of a friend in her apartment and they did it together at—at their—at the Sycamore address."

The trial court found defendant guilty, finding that Laag was "a good witness," and sentenced him to six years' imprisonment. The court imposed various charges, including a $100 Trauma Center fee. Defendant timely appealed.

Defendant contends that the substance of Laag's statement to Wright should have been admitted, either as an admission against penal interest pursuant to *Chambers v. Mississippi*, 410 U.S. 284 (1973), or as an excited utterance. Generally, an extrajudicial declaration not under oath, by the declarant, that he, and not the defendant on trial, committed the crime is inadmissible as hearsay even though the declaration is against the declarant's penal interest. *People v. Bowel*, 111 Ill. 2d 58, 66 (1986); *People v. Tate*, 87 Ill. 2d 134, 143 (1981). "Such declarations may, however, be admitted where justice requires." *Bowel*, 111 Ill. 2d at 66. Where sufficient indicia of trustworthiness are present, such statements may be admitted under the statement-against-penal-interest exception to the hearsay rule. *Chambers*, 410 U.S. at 302; *Tate*, 87 Ill. 2d at 143-44. In *Chambers,* the Supreme Court, in holding a declaration admissible, stated that there were sufficient indicia of trustworthiness

in that (1) the statement was made spontaneously to a close acquaintance shortly after the crime occurred; (2) the statement was corroborated by other evidence; (3) the statement was self-incriminating and against the declarant's interest; and (4) the defendant had an adequate opportunity to cross-examine the declarant. *Chambers*, 410 U.S. at 300-01.

Illinois courts hold that the presence of all four "*Chambers* factors" is not a condition of a statement's admissibility. Rather, the question is whether the statement was made under circumstances that provide "considerable assurance" of its reliability by objective indicia of trustworthiness. *People v. Thomas*, 171 Ill. 2d 207, 216 (1996).

Initially, we note that Laag's statement, to which Needham would purportedly have testified, did not necessarily implicate Laag in the burglary. She merely said—according to Needham—that she hid the gun sometime after the fact. Moreover, the statement would not necessarily have exculpated defendant, as the "friend" to whom Laag referred could just as easily have been defendant.[1] However, these facts, in and of themselves, would not necessarily make the statement inadmissible. Defendant's theory was that the "friend" was Elkington, and if the statements were sufficiently reliable, defendant was entitled to seek their admission for whatever support they lent that inference.

We agree with the State, however, that applying the *Chambers* factors supports the trial court's decision that the statement was not sufficiently reliable. "The admission of evidence is within the sound discretion of the trial court, and its ruling should not be reversed absent a clear

[1]If this were true, the statement was not entirely inconsistent with her trial testimony, in which she admitted driving defendant to Scheffler's apartment building. At trial, she testified that she helped defendant hide the gun, albeit unwittingly, by opening the trunk.

showing of abuse of that discretion." *People v. Tenney,* 205 Ill. 2d 411, 436 (2002). Here, the trial court did not abuse its discretion in excluding the statement.

The first *Chambers* factor, whether the statement was made to a close acquaintance shortly after the crime occurred, does not favor admissibility. The offer of proof does not tell us anything about the relationship between Laag and Wright. Moreover, although the statement was made shortly after the domestic violence incident, the burglary occurred some two weeks before, and we do not know precisely when Laag purportedly hid the gun.

The second factor, whether the statement was corroborated by other evidence, also does not support admissibility. In fact, there was virtually no evidence to corroborate the statement that Laag hid the gun at the behest of a friend other than defendant. Defendant insists that such corroboration existed by virtue of the facts that the gun was in fact hidden and that Elkington, the other possible suspect, was a friend of Laag. However, this evidence, such as it was, equally supports the State's theory that defendant, with Laag's unwitting assistance, stole the rifle as a favor to Elkington and that defendant told Laag that he put the rifle in the attic.

The third factor, whether the statement was against Laag's penal interest, supports the statement's admissibility. Although, strictly speaking, merely hiding a gun is not necessarily a crime, the State seems to concede that Laag must have known that the gun was stolen, and thus was guilty of a crime if she concealed it. See 720 ILCS 5/16—1(a)(4) (West 2006) (one commits theft who obtains control over stolen property "under such circumstances as would reasonably induce [her] to believe that the property was stolen"). However, this factor does not strongly favor admissibility. As noted, Laag did not expressly implicate herself in the burglary, unlike the declarant in *Chambers* who explicitly confessed to the crime. The primary import of Laag's statement was

to shift the blame to an unnamed "friend." Thus, the primary basis for admitting statements against penal interest—that a person is unlikely to falsely expose herself to criminal sanctions—is not strongly implicated. As to the final factor, Laag testified for the State, and thus was available as a witness. The State's assertion that she might have invoked her Fifth Amendment privilege is pure speculation.

We note, however, that the *Chambers* factors are not exclusive. The trial court could also have considered that the proposed testimony would have come from Needham, defendant's close friend who claimed to have overheard the conversation. In short, the presence of two *Chambers* factors does not compel the conclusion that the trial court abused its discretion by refusing to consider the statement.

Defendant alternatively argues that the statement was admissible under the spontaneous-declaration exception to the hearsay rule. This exception requires (1) an occurrence sufficiently startling to produce a spontaneous and unreflecting statement; (2) a lack of time for the declarant to fabricate a statement; and (3) that the statement relate to the occurrence in question. *People v. Sutton*, 233 Ill. 2d 89, 107 (2009). The critical inquiry is whether the statement was made while the excitement of the event predominated. *Sutton*, 233 Ill. 2d at 107.

Defendant contends that the statement was made a few hours after the domestic violence incident, which could produce a spontaneous and unreflecting statement. The obvious flaw in this argument is that the statement related not to the domestic violence incident, but to a burglary that occurred some two weeks earlier. Even overlooking this problem, the offer of proof contains no information about Laag's manner or tone of voice, so we are unable to conclude that the statement was in fact made while the excitement of the event predominated.

Finally, the State concedes that the trial court lacked statutory authority to impose a trauma center fee. The Clerks of Courts Act authorizes collection of a trauma center fee for those convicted of certain offenses, but not residential burglary. See 705 ILCS 105/27.6(b), (c) (West 2006). Thus, although defendant did not raise the issue in the trial court, the portion of the judgment imposing the fee is void, and we vacate it. See *People v. Valle*, 405 Ill. App. 3d 46, 61 (2010).

Affirmed in part and vacated in part.