2012 IL App (2d) 110043-U
No. 2-11-0043
Order filed March 16, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CEVIN Y. STANFORD, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 08-CF-231 Honorable T. Jordan Gallagher, Judge, Presiding.

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

ORDER

Held: Witness's out-of-court statement that defendant confessed to him was inadmissible because the witness did not have personal knowledge of the event underlying the confession; State's argument that defendant's request that witness kill defendant's ex-girlfriend was admissible was forfeited; it was unnecessary to reach the State's constitutional argument under *Crawford v. Washington*, 541 U.S. 36 (2004).

¶ 1 On February 20, 2008, the grand jury indicted defendant, Cevin Y. Stanford, on two counts of first degree murder (720 ILCS 5/9(a)(1) (West 2008); 720 ILCS 5/9(a)(2) (West 2008)). The State appeals from an order of the circuit court of Kane County barring the out-of-court statement by a witness that defendant confessed. We affirm.

¶ 2 On September 3, 2004, the Aurora, Illinois, police obtained a taped statement from one J.C. Knotts in which Knotts stated that defendant confessed to him that he killed the victim, James McClose, by shooting the victim through an open window while the victim was sleeping. In the same statement, Knotts also stated that defendant told Knotts that he (Knotts) should "take care of his girlfriend for him" if he went to jail for the murder, because the girlfriend could identify defendant as a passenger in a car on the day of the murder. By "take care of," Knotts said that defendant meant "kill."

¶ 3 In a pretrial interview with prosecutors, Knotts claimed that he had no recollection of the conversation with defendant, nor did he recall giving the police the recorded statement, although Knotts admitted that it was his voice on the tape.

¶ 4 On January 5, 2011, defendant filed a motion *in limine* to exclude Knotts' statement to the police under *Crawford v. Washington*, 541 U.S. 36 (2004). On the same date, the State filed a motion *in limine* to admit Knotts' statement under section 115-10.1(a)(2)(c) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10.1(a)(2)(c) (West 2010)). The trial court ruled that Knotts' statement was inadmissible both under the Code and under *Crawford*. The State filed a certificate of impairment and a timely appeal.

¶ 5 The State contends (1) that Knotts' statement should have been admitted under section 115-10.1, and (2) that Knotts' memory loss did not render him unavailable for cross-examination under *Crawford*. Our supreme court has admonished that "cases should be decided on nonconstitutional grounds whenever possible, reaching constitutional issues only as a last resort." *In re E.H.*, 224 Ill. 2d 172, 178 (2006). As section 115-10.1 is dispositive of the issue of the admissibility of Knotts' statement, we will not consider the State's *Crawford* argument.

¶ 6 Generally, a prior inconsistent statement is admissible only for purposes of impeachment. *People v. Bueno*, 358 Ill. App. 3d 143, 156 (2005). However, section 115-10.1 allows the admission of a witness's prior inconsistent statement as substantive evidence under the following conditions:

> "(a) the statement is inconsistent with his testimony at the hearing or trial, and
>
> (b) the witness is subject to cross-examination concerning the statement, and
>
> (c) the statement—
>
> (1) was made under oath at a trial, hearing or other proceding, 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, or
>
> (B) the witness acknowledged under oath the making of the statement either in his testimony at the hearing or trial in which the admission into evidence of the prior statement is being sought, or at a trial, hearing or other proceeding, or
>
> (C) the statement is proved to have been accurately recorded by a tape recorder, videotape recording, or any other similar electronic means of sound recording." 725 ILCS 5/115-110.1 (West 2010).

¶ 7 The State acknowledges that under this court's decision in *Bueno*, Knotts' statement is inadmissible because Knotts did not have personal knowledge of the event that is the subject of the statement made by Knotts. In *People v. Fillyaw*, 409 Ill. App. 3d 302, 312 (2011), this court again held that a statement made to a testifying witness by a third party describing events of which the testifying witness has no firsthand knowledge is inadmissible as substantive evidence under section

115-10.1(c)(2). In other words, Knotts had personal knowledge of his conversation with defendant, but he did not have personal knowledge of the murder. The State also concedes that the other appellate districts are in accord with *Bueno* and *Fillyaw*.

¶ 8 Despite the current state of the law, the State posits that the decisions of the appellate court are wrong because the statute says only "personal knowledge" and does not limit that knowledge to the underlying event. The State argues that the appellate court's interpretation of the statute "subverts" its plain meaning and that it is up to the trier of fact to give the statement whatever weight is appropriate. The fundamental rule of statutory interpretation is to give effect to the legislature's intent. *People v. McCarty*, 223 Ill. 2d 109, 124 (2006). The best indication of the legislature's intent is the language of the statute, given its plain and ordinary meaning. *McCarty*, 223 Ill. 2d at 124. A court must consider a statute in its entirety, keeping in mind the subject it addresses and the legislature's apparent objective in enacting it. *McCarty*, 223 Ill. 2d at 124. If the language of the statute is clear and unambiguous, it will be given effect without resorting to further aids of construction. *McCarty*, 223 Ill. 2d at 124. Generally, we review a trial court's decision to admit or exclude hearsay statements under the abuse-of-discretion standard. *People v. Martin*, 401 Ill. App. 3d 315, 319 (2010). However, here, the State asks us to construe the meaning of section 115-10.1. The interpretation of a statute presents a question of law, which is reviewed *de novo*.

¶ 9 As section 115-10.1 has already been construed by courts, we need not reinvent the wheel. We begin by examining the legislature's intent in enacting section 115-10.1. The legislature determined that prior inconsistent statements should be admitted substantively because: (1) the prior statement was made closer in time to the event in question than the statement at trial; (2) the parties need protection from turncoat witnesses; (3) the witness is available for cross-examination; and (4)

the admission of such statements furthers the search for truth. *People v. Morales*, 281 Ill. App. 3d 695, 702 (1996). The linchpin of the constitutionality of section 115-10.1 is that it incorporates safeguards that "foster reliability." *Morales*, 281 Ill. App. 3d at 702. In *Morales*, the court noted the United States Supreme Court's concern in *California v. Green*, 399 U.S. 149 (1970), that convictions be prevented where a reliable evidentiary basis is totally lacking. *Morales*, 281 Ill. App. 3d at 702-03.

¶ 10 In construing section 115-10.1, the court in *People v. Wilson*, 302 Ill. App. 3d 499 (1998), said that "[t]he personal knowledge required by the Act is of a particular kind." *Wilson*, 302 Ill. App. 3d at 508. The personal knowledge requirement relates to personal knowledge of the facts underlying a third person's statement. *Wilson*, 302 Ill. App. 3d at 508. "A third person's declaration cannot serve as the basis of the personal knowledge; the witness must have firsthand knowledge of the event." *Wilson*, 302 Ill. App. 3d at 508. The reason for this is self-evident:

> "In general, Illinois courts look with suspicion upon the introduction of prior statements of witnesses, since 'allow[ing] an accused to be convicted on the extrajudicial statements of witnesses *** runs counter to the notions of fairness on which our legal system is founded.' [Citation.] However, when a witness has personal knowledge of the events contained in a prior statement, the reliability of the statement is increased, since 'a witness is less likely to repeat another's statement if he witnesses the event and knows the statement is untrue.' [Citation.] Furthermore, when the witness is cross-examined at trial about the truth of that prior statement, the jury may observe the witness's demeanor during cross-examination to gauge the truth or falsity of the prior statement vis-a-vis the witness's current version of events. [Citation.] By contrast, if the witness is merely narrating a third-party

> statement about which the witness has no personal knowledge, cross-examination gives the jury no insight into the truth of the statement, making it more difficult to judge its reliability. [Citation.]" *People v. McCarter*, 385 Ill. App. 3d 919, 930-31(2008).

Wilson is consistent with the intent of the sponsors of section 115-10.1, whose "motivating force" was an article written by Professor Graham of the University of Illinois Law School in which Professor Graham supported the definition of personal knowledge in which only "first-hand" hearsay would be admitted. *People v. Coleman*, 187 Ill. App. 3d 541, 548 (1989). "[A]dmission-confessions, the least reliable and most damaging evidence to the criminal defendant, would not [in Professor Graham's view] be admitted as substantive evidence even if the alleged admission is contained in a signed statement of the in-court witness, unless the declarant also had personal knowledge of the underlying event." *Coleman*, 187 Ill. App. 3d at 548. One legislator read a portion of Professor Graham's article into the record, which specifically included the limited definition given to the term "personal knowledge." *Coleman*, 187 Ill. App. 3d at 548. Thus, it is obvious that the appellate court did not create the definition, but ascertained the legislature's intent and has given effect to that intent. We find it remarkable that the State did not discuss *Coleman*, which was decided 23 years ago. Moreover, where the legislature chooses not to amend a statute that has been judicially construed, it will be presumed that the legislature has acquiesced in the court's statement of legislative intent. *People v. Perry*, 224 Ill. 2d 312, 331 (2007). Accordingly, Knotts' statement was inadmissible.

¶ 11 The State contends that the portion of Knotts' statement that defendant wanted Knotts' to kill defendant's girlfriend is admissible because this was within Knotts' personal knowledge. The State

raises this argument for the first time on appeal and has forfeited it. *People v. Adams*, 131 Ill. 2d 387, 395 (1989). Accordingly, the judgment of the circuit court of Kane County is affirmed.

¶ 12 Affirmed.